Western Australian

Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 7 WEDNESDAY, 26TH JUNE, 1996 Vol. 76—Part 1

THE mode of citation of this volume of the *Western Australian Industrial Gazette* will be as follows:—
76 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeals against decision of Full Bench—

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
CORAM: ROWLAND J (Presiding Judge)
FRANKLYN J
ANDERSON J
DELIVERED: 15 MAY 1996
FILE NO/S: APPEAL IAC 1 of 1996
BETWEEN: JOYCE CORPORATION LTD
Appellant
AND
RUTH LAWSON
First Respondent
JOSEPH SURACE
Second Respondent
DEAN HALL
Third Respondent

Catchwords:

Industrial law—WA-Redundancy—Claim by former employees for money payments—Whether power in Commission to order payment of outstanding contractual benefits without ordering reinstatement.

Representation:

Counsel:

Appellant: Mr H J Dixon
Respondents: Mr M J Lourey

Solicitors:

Appellant: Jackson McDonald
Respondents: Mr M J Lourey

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

Coles Myer Ltd t/a Coles Supermarkets v Coppin & Ors (1993) 73 WAIG 1754

The Federated Miscellaneous Workers' Union of Australia WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service (1994) 74 WAIG 1493

Harry John Sakal v T O'Connor & Sons Pty Ltd (1995) 75 WAIG 1509

Kounis Metal Industries Pty Ltd v Transport Workers' Union (1992) 73 WAIG 14

Robe River Iron Associates v Association of Draughting Supervisory and Technical Employees of Western Australia (1987) 68 WAIG 11

Case(s) also cited:

Robe River Iron Associates v The Metal & Engineering Workers Union Western Australian Branch (1975) 75 WAIG 2478

Slonim v Fellows (1984) 154 CLR 505

ROWLAND J:

I have read the reasons to be published by Anderson J. I am in agreement with those reasons and have nothing further to add.

FRANKLYN J:

I have had the advantage of reading the reasons for judgment of Anderson J. I agree with those reasons and have nothing to add.

ANDERSON J:

The respondents to this appeal had each been employed by the appellant in the appellant's timber division. On 16 May 1994 they were advised by the appellant that it had sold its timber division to National Furniture Industries and they would be made redundant. On 23 May 1994 they were given notice of termination of employment, effective from 27 May 1994. Before this notice was received Ms Lawson made an application to the Industrial Relations Commission for payment of outstanding contractual benefits. After the notice of termination was received, but before it became effective, Mr Surace and Mr Hall each filed similar applications.

The applications were made on the basis that there was an implied term in the contracts of employment that the appellant would pay redundancy allowances to the respondents should they be made redundant. In Ms Lawson's case there was an additional claim for *pro rata* long service leave entitlement which she said was due to her under an implied term in her contract of employment.

In the proceedings the appellant submitted by way of preliminary argument that the Commission had no jurisdiction to hear and determine the applications, as they were money claims unaccompanied by a claim for reinstatement and therefore came within the rule in *Pepler's* case *(Robe River Iron Associates v Association of Draughting, Supervisory and Technical Employees of Western Australia* (1987) 68 WAIG 11). In that case it was decided by this Court, differently constituted, that, in the words of Olney J:

> "... There is nothing in the Act to justify the exercise of a jurisdiction to award a dismissed employee compensation or any other money payment except as an incident to an order for reinstatement or re-employment."

Although there has been some debate in subsequent cases in this Court as to the precise jurisprudential basis for the decision in *Pepler's* case, it has been accepted as settling the question whether the Commission has authority to make monetary awards to dismissed workers who are not reinstated. *Kounis Metal Industries Pty Ltd v Transport Workers' Union* (1993) 73 WAIG 14; *Coles Myer Ltd t/a Coles Supermarkets v Coppin* (1993) 73 WAIG 1754; *The Federated Miscellaneous Workers' Union of Australia, WA Branch v Nappy Happy Hire Pty Ltd t/a Nappy Happy Service* (1994) 74 WAIG 1493; *Harry John Sakal v T O'Connor & Sons Pty Ltd* (1995) 75 WAIG 1509.

Senior Commissioner Halliwell, who heard the present applications at first instance, decided that *Pepler's* case and the line of cases following it could be distinguished from the present cases and that he did have jurisdiction to hear and determine the applications. Senior Commissioner Halliwell determined that Ms Lawson's claim for *pro rata* long service leave should succeed but that the other claims fail on their merits in that there was no implied term in any of the contracts of service to pay redundancy. On that ground he dismissed the applications of Mr Surace and Mr Hall and that part of Ms Lawson's application which amounted to a claim for redundancy but allowed Ms Lawson's claim for *pro rata* leave entitlements.

As far I can make out from the material before this Court, the three respondents appealed to the Full Bench against the finding that there was no implied term in their contracts of employment to pay redundancy and the appellant appealed to the Full Bench against the award to Ms Lawson of *pro rata* leave entitlements. In its appeal the appellant again sought to challenge the decision of the Senior Commissioner that there was jurisdiction to hear and determine the matters generally.

The Full Bench reaffirmed Senior Commissioner Halliwell's decision that there was jurisdiction to entertain the applications, reversed his decision as regards the respondents' contractual entitlement to redundancy and reversed his decision as regards Ms Lawson's contractual rights to *pro rata* leave entitlements.

The appellant now appeals to this Court essentially on the jurisdiction point, but also contending that the Full Bench had erred in law in construing the contracts of service as containing an implied promise to make redundancy payments on termination of the contracts of service. At the request of both parties the question of jurisdiction was dealt with as a preliminary issue and it was agreed that argument on the other issues in the appeals be stood over pending the outcome of the preliminary issue.

Mr Louery, who appeared for the respondents, contended that the decision by Senior Commissioner Halliwell and the Full Bench that the Industrial Relations Commission did have jurisdiction to hear and determine these claims should be affirmed and could be affirmed without reversing the decision in *Pepler's* case. As I understood Mr Louery's argument, it was essentially to the effect that in *Pepler's* case and most of the other cases which followed and affirmed *Pepler's* case the claim of the dismissed employee was initiated after he/she had been dismissed and was essentially for compensation at large, in the nature of a claim for damages for wrongful dismissal, but in this case the respondents had filed their claims before the termination of their employment and were seeking to recover contractual entitlements as distinct from compensation.

For the proposition that there is jurisdiction if the claim is initiated before the contract of employment terminates, reliance was placed upon the statement by Owen J in the *Kounis* case, where his Honour said at 19:

> "In my view, the judgments in *Pepler* suggest that the decision rests upon a point of principle, namely, that jurisdiction depends on the present or future existence of the employer/employee relationship. Unless, *at the time when the application is made* (my emphasis) the relationship 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."

I do not think it fairly emerges from his Honour's judgment in that case that, provided the application for relief is filed or initiated before the termination of the contract of service, the Industrial Relations Commission has the jurisdiction contended for, that is, jurisdiction to award monetary payments to dismissed employees who are not reinstated. Indeed, this Court has since decided the *Nappy Happy* case in which the industrial proceedings were initiated before the contracts of service were terminated. The court decided that the rule in *Pepler's* case applied.

In my opinion the principle accepted in all the cases since *Pepler* include at least the principle that a claim only for monetary payments by a former employee is not of itself an industrial matter. It is the jurisdiction to grant the remedy with which we are concerned; and if, when the time comes to grant the remedy, the matter does not have an industrial character or complexion there is no jurisdiction to grant the remedy.

As to the proposition that *Pepler's* case only covers claims for compensation, not contractual entitlements, it was pointed out by Kennedy J in *Sakal v T O'Connor & Sons Pty Ltd* the rule upon which the court acted in *Pepler's* case is contained in the passage in the judgment of Olney J in that case which I have set out above, that is, there is no jurisdiction to award any money payment to former employees, except as an incident to an order for reinstatement or re-employment.

If the orders were allowed to stand in this case, they would be orders which awarded to dismissed employees money payments unaccompanied by an order for reinstatement or re-employment. In my opinion that would be contrary to the rule on which the court acted in *Pepler's* case and has consistently acted ever since.

The case is not affected by the amendments that were made to s7 of the Act in 1995 by the inserstion of subs 7(1a) further expanding the definition of "industrial matter" to include matters relating to "the refusal or failure of an employer to allow and employee a benefit under his contract of service ... even though their relationship as employee and employer has ended". The amendments effected by subs 7(1a) did not come into effect until 9 May 1995 and do not have retrospective operation. Subsection 7(1a) therefore cannot be applied in this case.

I would allow the appeal.

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Industrial Relations Act, 1979

Appeal No. IAC 1 of 1996

IN THE MATTER of an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 420 of 1995 dated the 18th day of December 1995.

B E T W E E N

Joyce Corporation Ltd
Appellant

and

Ruth Lawson and Others
Respondents.

BEFORE:

JUSTICE ROWLAND (PRESIDING JUDGE)
JUSTICE FRANKLYN
JUSTICE ANDERSON.

15 May 1996.

Order.

HAVING heard Mr H J Dixon (of Counsel) for the appellant, and Mr M J Lourey for the respondents, THE COURT HEREBY ORDERS that the appeal be allowed.

J. G. CARRIGG,
Clerk of the Court.

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

CORAM: KENNEDY J (Presiding Judge)

DELIVERED: 13 MAY 1996

FILE NO/S: APPEAL IAC 4 of 1996

BETWEEN: BURSWOOD RESORT (MANAGEMENT) LIMITED
Appellant

and

THE AUSTRALIAN LIQUOR HOSPITALITY AND MISCELLANEOUS WORKERS UNION, MISCELLANEOUS WORKERS DIVISION, WESTERN AUSTRALIAN BRANCH
First Respondent

THE FEDERATED LIQUOR AND ALLIED INDUSTRIES EMPLOYEES UNION OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS
Second Respondent.

Catchwords:

Industrial relations (WA)—Power to grant stay of order pending determination of appeal.

Industrial Relations Act 1979, s87(3).

Representation:

Counsel:

Appellant: Mr H J Dixon and Mr L J Levine

Appearances:

First Respondent: Mr N R Whitehead
Second Respondent: Mr E L Fry

Solicitors:

Appellant: Parker & Parker
First Respondent: —
Second Respondent: —

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

Re Australian Nursing Federation; ex parte State of Victoria (1993) 112 ALR 177

Re Marks and Federated Ironworkers' Association; ex parte Australian Building Construction Employees and Builders' Labourers' Federation (1981) 34 ALR 208

Case(s) also cited:

Nil

KENNEDY J:

On 4 September 1995, a single Commissioner of the Western Australian Industrial Relations Commission ordered that the Burswood Resort Casino Employees' Industrial Agreement 1993 Amendment Agreement 1995, as set out in the schedule executed by the appellant and the second respondent on 7 August 1995, which varied and renewed the Burswood Resort Casino Employees' Industrial Agreement 1993 (No AG85 of 1993), be registered as an industrial agreement.

At the hearing before the Commissioner, the first respondent had sought to intervene. Counsel for the appellant indicated that the intervention would not be opposed if it were limited to the first respondent's advocate making submissions that there was a discretion to register the agreement and that registration of the agreement was not mandatory. The Commissioner, however, finding that the first respondent had a sufficient interest to intervene, granted it unconditional leave in that respect. The Commissioner then proceeded to deal with the question of whether there was a mandatory requirement for him to register the agreement. After argument, he held that such a requirement did exist. The only pre-conditions to registration, he considered, were those expressed in s41(2) of the *Industrial Relations Act 1979*—see, however, s41A. Having reached this conclusion, he did not hear the first respondent any further and he revoked its intervention status. The first respondent was therefore refused the right to argue that the agreement was not an agreement within the terms of s41 of the Act and registration of the amending agreement as an industrial agreement was ordered. Although the first respondent had foreshadowed to the Commissioner that it had submissions to make and evidence to adduce which would go to the question of whether the Commissioner could in law register the agreement the subject of the application, no particulars of its contentions appear to have been provided.

It was not in issue that the effect of the registration of the industrial agreement was to grant increased wages to approximately 2,200 employees and to permit changes in rosters and the rostering system so that flexibility was introduced in exchange for the payment of wages.

The first respondent appealed to the Full Bench against the decision of the Commissioner on six grounds, but it appears that only one ground was pursued, that being that the Commissioner had, in the circumstances, denied the first respondent natural justice in his hearing and determination of the matter.

The Full Bench, by a majority, on 3 April 1996, held that there had been a denial of natural justice and quashed the order of the Commissioner registering the agreement. The President dissented, finding that a full and fair opportunity to be heard had been afforded to the first respondent because, once the Commissioner at first instance had decided that he was required, as a matter of duty, to register the agreement, there was no matter in relation to which the first respondent could make submissions or adduce evidence. The real error, the President found, was that the Commissioner decided that it was his duty to register the agreement and that there was therefore no scope for any submissions as to the law or need to call any evidence which could persuade the Commissioner that the agreement should not be registered. In these circumstances, the President would have entertained an application to amend the grounds of appeal to raise what he regarded as the real error. If the application were not made, or if it were not successful, he would have dismissed the appeal. As the President was in a minority, the application was not made.

By notice dated 23 April 1996, the appellant has appealed against the decision of the Full Bench on three grounds. The first ground relates to the failure or refusal of the Full Bench to hear an application by the appellant to the effect that there was no valid, or no validly authorised, appeal before the Full Bench, apparently for the reason that the first respondent was not validly empowered to institute the proceedings because the persons purporting to act on behalf of the first respondent had not been properly elected. This was not an issue which had been raised before the single Commissioner.

The second ground challenges the granting of leave to the first respondent to appeal to the Full Bench, having regard to the first respondent's failure to particularise, identify or disclose to the Full Bench, *inter alia*, the basis upon which it contended that the agreement was not an agreement or a proper agreement or a genuine agreement so as to fall within s41(1) of the Act, to the Full Bench's failing to satisfy itself that the submissions or materials which the first respondent might put forward would possibly have affected the decision of the Commissioner at first instance and to its failure to have regard to the concession by the first respondent at first instance that its rights were only indirectly affected by the outcome of the application. The third ground of appeal complained of the upholding of the appeal for the reasons expressed in the second ground in relation to the granting of leave.

The appellant, by notice of motion filed on 23 April 1996, applied for a stay of the decision and order of the Full Bench pending the determination of its appeal. That application was consented to by the second respondent. The first respondent gave notice that it did not oppose the application. In each case, a representative attended the hearing before me and confirmed its position.

Regulation 6 of the *Industrial Relations Act (Western Australian Industrial Appeal Court) Regulations 1980* gives to a Judge of this Court power to order a stay of proceedings on a decision being appealed from. There is, however, a well established distinction between the staying of an order and the staying of proceedings under the order—see *Re Marks and Federated Ironworkers' Association; ex parte Australian Building Construction Employees and Builders' Labourers' Federation* (1981) 34 ALR 208, at 211, and *Re Australian Nursing Federation; ex parte State of Victoria* (1993) 112 ALR 177, at 184-185. The interlocutory relief sought by the appellant is a story of the decision and order. That does not come within reg 6.

If there exists any power to stay the decision and order (or indeed to stay proceedings), it is conceded that it must be found

in s87(3) of the *Industrial Relations Act*, which provides as follows:

> "A member of the Court authorized by the Presiding Judge, on the application of any party to any proceedings or matters before the Court, may on summons returnable before that member sitting in chambers, make in relation to that proceeding or matter any order that he thinks just as to any interlocutory proceeding to be taken before the hearing, including, without affecting the generality of the foregoing, the costs of the interlocutory proceeding, the issues to be submitted to the Court and the person, if any, to be served with notice of those proceedings."

This is the only source of the power in this Court to make interlocutory orders. The power is, on the face of it, a wide power and, in my opinion, it should be construed widely having regard to the objects of the Act to be found in s6. The identifying of some particular interlocutory proceedings in s87(3) is said not to affect the generality of the power, a saving, it may be noted, which is not to be found in the comparable power of the Commission in s26(1)(o). The present is not a case where, if the order is made, this Court would be sterilising the operation of an order of the Commission before the court had determined the validity of the order. In the normal case, where the granting of a stay of an order is opposed, it would have to be quite exceptional before such a stay would be granted. In this case, however, the only other party to the agreement has, as I have indicated, consented, and the first respondent does not oppose the appellant's application. Furthermore, I accept that, on their face, the grounds of appeal have some prospects of success.

It is unfortunate that I have not had the benefit of any argument against the existence of the power contended for. Nevertheless, I consider that in this case it would be "just" to make the order which has been sought. In the circumstances, I propose to make that order.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.
Industrial Relations Act 1979.

Appeal No. IAC 4 of 1996.

IN THE MATTER of an application for a stay of the Order of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1075 of 1995 dated the 15th day of April 1996.

BETWEEN

Burswood Resort (Management) Limited
Applicant
and
The Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
First Respondent
and
The Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Union of Workers
Second Respondent.

BEFORE:
MR JUSTICE KENNEDY.

13 May 1996.

Order.

HAVING heard Mr H J Dixon and Mr L J Levine (of Counsel) for the applicant and Mr N R Whitehead for the first respondent and Mr E L Fry for the second respondent, THE COURT HEREBY ORDERS that the Order of the Full Bench of the Western Australian Industrial Relations Commission in Matter No.1075 of 1995 dated 15 April 1996 be stayed.

J.G. CARRIGG,
[L.S] Clerk of the Court.

FULL BENCH—

Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Carroll Realty
(Appellant)
and
Joseph William Charles Chambers
(Respondent).
No. 539 of 1996.

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

30 May 1996.

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, wherein, upon application by the respondent (as applicant at first instance), in a claim alleging non-payment of contractual benefits, the Commission, on 21 March 1996, ordered as follows (see page 22 of the appeal book (hereinafter referred to as "AB"))—

> "THAT the Respondent, Carroll Realty of Suite 5/47 Monash Avenue, Como WA 6152, shall pay to Mr J.W.C. Chambers of 30A Redmond Street, Salters Point WA 6152 the sum of fourteen thousand six hundred and seventy five dollars ($14675), within 14 days of the date of this Order."

The appellant appeals against this decision on 11 grounds alleging errors of fact and of law. When this appeal came on for hearing before the Full Bench the appellant sought and was granted leave to add grounds 12 and 13, which read as follows (see page 3A (AB))—

> "12. The Senior Commissioner erred in law in exercising jurisdiction to award a remedy to a person who was not an employee at the time the remedy was granted when there was evidence before him and it was an agreed fact that Chambers' employment ended in April 1995. (ref: Appeal No 1 of 1996 of the Industrial Appeal Court delivered 15 May 1996)
>
> 13. In the alternative, the Senior Commissioner failed to apply the proper law in relation to contractual benefits claims by relying on amendment No 1 of 1995 of the Industrial Legislation Amendment Act 1995 which came into effect on 9 May 1995."

Having heard the parties, the Full Bench decided that it was just and expedient for the disposition of the matter that leave be given to make the amendment.

Leave was also granted to augment the appeal book without any real objection.

Notwithstanding that jurisdiction was not argued at first instance and that the decision of the Industrial Appeal Court in Joyce Corporation Ltd v Lawson and Others (Lib No: 960264A) (unreported) Appeal IAC 1 of 1996 delivered 15 May 1996 (IAC) was not delivered until 15 May 1996, as the Full Bench has expressed it in SGS Australia Pty Ltd v Taylor 73 WAIG 1760 at 1761 (FB), quoting from Halsbury's Laws of England, Fourth Edition, Volume 10, paragraph 717—

> "It is the duty of an appellate court to entertain a plea as to jurisdiction at any stage, even if the point was not raised in the court below (Chief Kwame Assante v. Chief Kwame Tawia [1949] WN 40)."

Further, the point as to jurisdiction was a bare legal point as Deane J said in Squire v Rogers 27 ALR 330 at 337 (FC). In Welsh v Anderson (1902) 5 WAR 1 (SC FC) the same view was taken as that which was taken in the Chief Kwame Assante v Chief Kwame Tawia [1949] WN 40.

There was therefore ample authority to enable the Full Bench,

and, indeed, it was its duty to entertain the point of jurisdiction raised by the proposed amendment.

It is quite clear that the added grounds of appeal were meant to claim that an error of law occurred in that the Commission at first instance had no jurisdiction to hear and determine the matter because of the decision of the Western Australian Industrial Appeal Court in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit).

We decided without real objection to determine the point raised by the added grounds of appeal first and separately.

BACKGROUND

The application was filed in the Commission on 9 February 1995, according to the stamp of the Commission which appears on it. At that time, the contract of employment was still on foot. The application was heard by the Commission on 10 August 1995, 14 December 1995, 15 December 1995 and 18 January 1996. The reasons for decision are dated 11 March 1996. The order was made on 21 March 1996.

It was conceded by Mr Clohessy, who appeared for the respondent, that the contract of service was terminated in April 1995. It was also conceded that no contract of employment was afoot at the time of the hearing of this matter and the making of the order which is the decision the subject of appeal.

The appellant relied on Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit). Anderson J, with whom Rowland and Franklyn JJ agreed, held that the principle accepted in all cases since RRIA v ADSTE 68 WAIG 11 (IAC) ("Pepler's Case") include at least the principle that a claim only for monetary payments ((ie) not one including an application for reinstatement) by a former employee is not of itself an industrial matter. Further, the Industrial Appeal Court held that if and when the time comes to grant the remedy the matter does not have an industrial character or complexion there is no jurisdiction to grant the remedy. Further, the Industrial Appeal Court reaffirmed the principle in Pepler's Case (op cit) set out by Olney J in the following words—

> "... There is nothing in the Act to justify the exercise of a jurisdiction to award a dismissed employee compensation or any other money payment except as an incident to an order for reinstatement or re-employment."

The Industrial Appeal Court said in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit) at page 5—

> "... there is no jurisdiction to award any money payment to former employees, except as an incident to an order for reinstatement or re-employment."

In this case, at the time this matter was heard and determined, Mr Chambers was a former employee, no order was made or sought for reinstatement or re-employment, and there was therefore no jurisdiction to award any money payment to him as claimed or at all.

There were submissions by Mr Clohessy that s.7(1a) of the Industrial Legislation Amendment Act 1995, which was inserted in it and came into effect on 9 May 1995, had retrospective operation. S.7(1a) provides—

> "A matter relating to—
>
> (a) the dismissal of an employee by an employer; or
>
> (b) the refusal or failure of an employer to allow an employee a benefit under his contract of service,
>
> is and remains an industrial matter for the purposes of this Act even though their relationship as employee and employer has ended."

In other words, were this provision to have had retroactive operation, then it would have conferred jurisdiction to hear and determine the matter on the Commission and the law would not have been as the decision in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit) now prescribes it to be. However, the Industrial Appeal Court in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit) held that the amendments affected by s.7(1a) of the Industrial Legislation Amendment Act 1995, not having come into effect until 9 May 1995, did not have any retrospective operation and that s.7(1a) could not be applied in that case. We are bound by the authority of Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit). It is, in any event, clear that s.7(1a) has nothing but prospective operation from its own terms and the terms of the Act. S.7(1a) cannot therefore be applied in this case and there was, as we have said, no jurisdiction in the Commission at first instance to hear and determine the application before it. For those reasons, the appeal must be upheld. It is not now necessary to determine any other ground of appeal.

After the Full Bench had delivered its decision on 22 May 1996, Ms Brown, on behalf of the appellant, made an application for costs. She did so on the basis that as soon as the appellant had become aware of the decision in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit) it had made a copy of it available. Accordingly, she submitted that if properly advised the respondent should not have continued its opposition to the appeal. The amount which she said ought to be ordered to be paid on behalf of her client related to expenses which had been incurred by way of obtaining transcript, etc, before the decision in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit) issued. The decision in Joyce Corporation Ltd v Lawson and Others (unreported) (IAC) (op cit), of course, had issued only seven days before the date of the hearing of this appeal.

Under s.27(1)(c) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") the Commission may in relation to any matter before it—

> "(c) order any party to the matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any legal practitioner, or agent;"

There is no limitation upon the power of the Commission in s.27(1)(c) of the Act to order costs such as exists in s.84A(6) of the Act where costs cannot be ordered unless, in the opinion of the Full Bench, the proceedings have been frivolously or vexatiously instituted or defended.

The Full Bench is required to exercise its discretion in accordance with s.26 of the Act, and otherwise within the parameters of the Act and the facts of this particular matter. We were not of the opinion that the equity, good conscience and substantial merits of the case were with the appellant in relation to this application. The expenses were incurred when the grounds of appeal had not been amended and when the grounds of appeal did not claim an error of jurisdiction as the amended grounds did. In fact, these expenses were incurred a long time ago. If these expenses had been incurred as a result of the failure of the respondent to concede, if that is what he should have done, then that might have been a different matter, but that is not necessary for us to so decide.

That application, however, for those reasons, is dismissed.

For the abovementioned reasons the appeal is upheld and the decision of the Commission made on 21 March 1996 quashed.

Appearances: Ms C Brown on behalf of the appellant.

Mr R Clohessy on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Carroll Realty
(Appellant)
and
Joseph William Charles Chambers
(Respondent).
No. 539 of 1996.

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

23 May 1996.

Order.

THIS matter having come on for hearing before the Full Bench on the 22nd day of May 1996, and having heard Ms C Brown on behalf of the appellant and Mr R Clohessy on behalf of the respondent, and the Full Bench having determined that its rea-

sons for decision will issue at a future date, it is this day, the 23rd day of May 1996, ordered as follows—

(1) THAT leave be and is hereby granted to the appellant herein to amend the appeal book filed herein by the inclusion of additional pages filed herein.

(2) THAT leave be and is hereby granted to the appellant herein to amend the grounds of appeal by the addition of grounds 12 and 13 thereof in accordance with the Schedule headed "Additional Grounds of Appeal" filed herein.

(3) THAT appeal No 539 of 1996 be and is hereby upheld and the decision of the Commission in application No 111 of 1995 made on the 21st day of March 1996 be and is hereby quashed.

(4) THAT the application by the appellant herein, pursuant to s.27(1)(c) of the Industrial Relations Act 1979 (as amended), for an order for payment of costs and expenses 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 Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
(Appellant)

and

Ngala Family Resource Centre and Others
(Respondents).

Nos. 1172, 1173, 1174, 1175, 1176, 1177 and 1183 of 1995.

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

16 May 1996.

Reasons for Decision.

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

These are appeals against the decisions of the Commission, constituted by a single Commissioner, made on 3 October 1995 in applications Nod 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994, decisions whereby the Commission varied the Hospital Workers (N'gala) Award 1958 Award No 6A of 1958, the Aged and Disabled Persons Hostel Award 1987 Award No A 6 of 1987, the Hospital Employees' (Homes of Peace) Consolidated Award 1981 Award No 26 of 1960, the Crothall Hospital Services (WA) Pty Ltd Award No A 3 of 1987, the Enrolled Nurses and Nursing Assistants (Private) Award No 8 of 1978, the Private Hospitals Employees' Award 1972 Award No 27 of 1971 and the Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978 No R 2 of 1977.

All of the appeals were heard together by consent.

The Commission fixed the operative date of the variation of the awards as being from the beginning of the first pay period commencing on or after 1 September 1995.

GROUNDS OF APPEAL

It is against those decisions that the appellant appeals on the following grounds, which are identical in each case, except for references to the different awards and parties—

"1. In determining an operative date of 1 September 1995 for the Second Arbitrated Safety Net Adjustment the Commissioner erred:

1) by failing to given (sic) any reasons whatsoever for determining that date.

2) by failing to properly consider the low paid nature of the employees cover by the award.

3) by failing to properly consider the community expectation that National Wage Decision will be accessed without undue delay.

4) in that the date is inconsistent with the intention of the State Wage Decision (No. 985 of 1994) that all workers under state awards should receive a $24 increase between 1 November 1991 and 1 July 1996.

2. In varying the award to insert the Clause—Enterprise Flexibility Provisions the Commissioner erred:

1) in that the clause as inserted is contrary to the intent of the State Wage Decision (No 985 of 1994) is (sic) that it

(a) encourages individual contracts rather than enterprise based bargaining.

(b) is complex and difficult to understand.

2) failing to properly consider the nature of the workforce covered by the award.

3) failed to properly consider the low paid nature of the workforce covered by the award.

3. The appellant seeks an order that the decision of the Commissioner is varied to include an operative date of March 1995 and a new Enterprise Flexibility Provision as follows:

ENTERPRISE FLEXIBILITY PROVISION

(1) At each enterprise or workplace, a consultative mechanism and procedures shall be established, comprising representatives of the employer, employees and the Union.

(2) The purpose of such consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise and/or workplace according to its particular needs.

(3) The particular mechanism and procedure established shall be appropriate to the site (sic), structure and needs of the enterprise and/or workplace.

(4) Where agreement is reach at an enterprise and/or workplace through such mechanism and procedure, and where giving effect to such agreement required this award, as it applies at the enterprise and/or workplace, to be varied, an application to vary shall be made to the Commission.

(5) The agreement shall be made available in writing, and be filed with the Commission.

(6) Where an agreement made pursuant to this clause varying this award is approved it shall become a Schedule to this award, and the agreement shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.

(7) The agreement must meet the following requirements.

(a) The purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;

(b) The majority of employees must genuinely agree to the change;

(c) No employee shall lose income as a result of the change;

(d) The Union must have been involved in the consultative mechanism or process:

(e) No employee is disadvantaged as a result of the agreement through reduction of any award or other legal requirements or protections, in the context of their terms and conditions of employment considered as a whole.

(f) The Commission safety net standards are not diminished.

(8) Any dispute arising in relation to these mat-

ters will be dealt with in accordance with the award disputes procedure."

The respondent opposed the applications at first instance.

Time was extended by the Full Bench to permit the appellant to file and serve the appeal books herein, the Full Bench being satisfied that the equity, good conscience and substantial merits of the case required it.

BACKGROUND

The appellant applied to the Commission in all of the abovementioned applications at first instance to vary the aforementioned awards by increasing the rates of wages and allowances by a minimum of $8.00 per week, consistent with the Safety Net Adjustments and Review Decision (September 1994) of the Australian Industrial Relations Commission (Print L5300) as it was given effect by the Commission in Court Session of this Commission in the 1994 State Wage Decision (75 WAIG 23 and 40 (CICS)).

The appellant is and was a party to all of these awards, and was, at all material times, an organisation of employees. The respondents are employers and are all parties to the abovenamed awards, insofar as they apply to each employer.

Upon the hearing of the applications at first instance there were a number of employers joined as parties in the proceedings.

All of the applications were heard together at first instance by consent.

The awards apply exclusively to the private health industry in this State. The applications were all filed in the Commission on 9 November 1994. They were heard on 30 May 1995, the s.32 conferences having taken place on 1 May 1995. The reasons for decision issued on 13 September 1995, and the orders issued on 3 October 1995. The orders were, in substance, the same.

The parties, upon the hearing of the matter at first instance, were largely in agreement about the access to and flow of the Arbitrated Safety Net Adjustments sought. Before the Commission, the parties agreed that the "precedent conditions" of the State Wage Case Decision (December 1994) were required to be satisfied before the Commission might grant the $8.00 adjustment, but none of the material awards presently contained "enterprise flexibility provisions". That requirement of the Principles was proposed to be satisfied by inserting into each award a common clause. There were, as we have said, different proposals as to what form that clause should take, from the appellant on the one hand and the respondent employers on the other hand. The appellant's proposal appears in the Schedule to the application herein and is set out above in the reproduced grounds of appeal. The respondents' proposal appears in the Schedule attached to the Answer. The main difference between the two proposals was that the clause proposed by the appellant provided for a consultative mechanism and procedures at each work place to comprise representatives of the employer, employees and the appellant organisation, and for an agreement to be reached through such a mechanism. The clause proposed by the employers on the one hand provided that agreement might be reached without the involvement of the union, although there was a provision for the employees to seek advice from or representation by the union during such negotiations. There was a further provision in the employer's proposal, namely that an agreement reached out of this negotiation process should be committed to writing. It was further provided that if the union was not involved in negotiations a copy of such agreement should then be sent to the Secretary of the appellant organisation.

There was also a provision that where the agreement represented the consent of the employer and the majority of the employees concerned the union should not unreasonably oppose the terms of the agreement.

The Commission, in the end, inserted a clause which reflected, for the most part, what the respondents sought by way of variation of the awards.

The second matter not agreed was the question of the appropriate date for the payment of the Second Safety Net Adjustment.

The Commission fixed the date of operation of the variations, as we have said, as at 1 September 1995.

Reasons for Decision.

The Commission at first instance, in its reasons, made the following findings and determinations—

(1) There was no justification for the claim of the union that it be granted an automatic guardianship role in relation to employment provisions which the parties to an employment relationship might view as appropriate to their enterprise.

(2) That a union, notwithstanding that it has the status of "party principal", ought not be granted an unlimited right to involvement in enterprise based negotiations. The authorities which say this should essentially be followed by the Commission.

(3) The employers' proposal protects the current minimum earnings applicable to the ordinary hours worked in accordance with each award. That is the reasonable and preferred course.

(4) The particulars relied upon do not, on their face, establish that by comparison with the Western Australian average the majority of employees are low paid.

The Commission therefore ordered that the awards be varied.

Significantly, in its reasons for decision the Commission gave no reasons why it fixed the operative date of the orders as at the date which it did. The order which the Commission made in each case then, save and except for differences to reflect the different awards and the different respondents, was as follows—

"THAT the Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978 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 September 1995."

The material part of the Schedule reads as follows—

"3. Insert after "Clause 37.—Structural Efficiency Implementation Tasks", the following new clause—

38.—ENTERPRISE FLEXIBILITY PROVISIONS

(1) Subject to the provisions contained elsewhere in this clause an employer, and an employee or group of employees, covered by this Award may reach agreement upon terms and conditions of employment to meet the requirements of the employers enterprise and the aspirations of the employee or employees.

(2) Where a matter arises for consideration between an employer, and an employee or group of employees which—

(a) were it to be settled between them as a term of an enterprise flexibility agreement such a term would be inconsistent with a provision of this Award, and

(b) were an inconsistent term of any such agreement to be given legal force and effect it would apply to a current employee who is known to the employer to be a member of the Union, and

(c) if it be intended that the Western Australian Industrial Relations Commission be requested to exercise its powers to give legal force and effect to such an inconsistent term of any agreement, the employer shall notify the Union of the matter raised for consideration as soon as reasonably practicable after it arises and before the matter is settled as a term of any agreement.

(3) Nothing in this clause shall prevent an employee seeking advice from, or being represented by, the Union during negotiations with the employer.

(4) No employee shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that an employer and an employee or groups

of employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by this Award for working ordinary hours of work.

(5) Where an enterprise flexibility agreement is made with the genuine consent of the employer and the majority of the employees covered by the scope of that agreement, the Union shall not unreasonably oppose the terms of the agreement.

(6) Any enterprise flexibility agreement made between the employer, and an employee or group of employees, shall be committed to writing and, if the Union participated in the related negotiations or it is intended that the agreement be given legal force and effect by the Western Australian Industrial Relations Commission pursuant to the Industrial Relations Act, 1979, the employer shall forward a copy of the agreement to the Secretary of the Union.

(7) An enterprise flexibility agreement made pursuant to this clause is entered into on the condition that, if an application be made to the Western Australian Industrial Relations Commission to give it legal force and effect by means of a variation to this Award, such variation is subject to the approval of the Western Australian Industrial Relations Commission and will, if approved, be made in the form of a schedule to this Award.

(8) Nothing in this clause shall be taken as limiting a right to apply the Western Australian Industrial Relations Commission to have the Commission exercise any one of its several powers that enable the Commission to give legal force and effect to an enterprise flexibility agreement."

ISSUES AND CONCLUSIONS

This was a discretionary decision as that is defined in Norbis v Norbis 65 ALR 12 (HC). The decision is therefore to be dealt with upon appeal as prescribed by House v The King [1936] 55 CLR 499 at 504-505 (HC) and see also Gromark Packaging v FMWU 73 WAIG 220 (IAC)). It is for the appellant to establish upon appeal, in accordance with the Principles laid down in House v The King (op cit) (HC), that the Commission at first instance erred in the exercise of that discretion. Unless that is done, the Commission cannot substitute its decision for that of the Commission at first instance.

THE NATURE OF THE APPLICATIONS

The nature of these applications should be clearly understood. They were applications to vary the subject awards made pursuant to s.40 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

S.39 of the Act applies "with such modifications as are necessary" in relation to an order made under s.40 of the Act. S.39(3) of the Act, read with s.40 of the Act, enables a variation to an award to be given retrospective effect. S.39(3) reads as follows—

"(3) The Commission may, by its award, give retrospective effect to the whole or any part of the award—

(a) if and to the extent that the parties to the award so agree; or

(b) if, in the opinion of the Commission, there are special circumstances which make it fair and right so to do,

but in a case to which paragraph (b) applies, not beyond the date upon which the application leading to the making of the award was lodged in the Commission."

It was, of course, for the applicant in this case to establish that the awards should be varied in accordance with the applications.

In determining the applications, the Commission was bound by the Wage Fixing Principles and the General Orders made to reflect them (see RRIA v AMWSU and Others 73 WAIG 1993 at 1998-1999 (IAC)). Further, the Commission could not make an order which was contrary to law, in particular the provisions of the Act.

GROUNDS OF APPEAL

A number of questions arose by the grounds of appeal.

Ground 1

Ground 1 is directed to the fixing of an operative date for the Second Arbitrated Safety Net Adjustment by the Commission. That was fixed as at 1 September 1995. It is alleged in the grounds of appeal that the Commission at first instance erred by failing to give any reasons for determining that date. The Commission gave no reasons at all for so doing, as we have observed. By virtue of s.35 of the Act, the Commission is bound to publish its reasons for decision when it hands down minutes of proposed orders. Those reasons for decision are required to be sufficient in accordance with the prescription which appears in Ruane v Woodside Offshore Petroleum Pty Ltd 71 WAIG 913 at 914-915 (FB).

We would also refer to a dictum from Dornan and Others v Riordan and Others 95 ALR 451 at 458 (FC FC) which is as follows—

"The statement of bare conclusions without the statement of reasons will always expose the tribunal to the suggestion that it has not given the matter close enough attention or that it has allowed extraneous matters to cloud its consideration."

A substantial failure to state reasons for a decision in the circumstances, when a statement of reasons is a requirement of the exercise of the decision-making power, is an error of law rendering the decision void ab initio (see Ruane v Woodside Offshore Petroleum Pty Ltd (op cit) (FB) and Dornan and Others v Riordan and Others (op cit) (FC FC)).

Mr Robertson, who appeared for the respondents, submitted, too, that in this case there was not sufficient evidence of any special circumstances which required that the operation of the orders varying the awards be made retroactive. In particular, did he submit that the only evidence was that there were lower paid employees covered by the awards. He did, however, submit that one could infer that there was an element of retroactivity which was ordered because it could be inferred that the Commission took account of the length and time between the date of hearing and the issue of the orders, which dates we have referred to above.

The Commission at first instance gave detailed reasons as to why the orders were made. The orders constituted the decision made by the Commission upon the applications at first instance.

There were adequate reasons for the decision as a whole, but they contained no reason for the decision to make the variations to the awards, which was to make the decisions retroactive and to fix the date from which the decisions were to operate as 1 September 1995. The fact that no reasons were given carries with it the risk that the Commission might be held not to have given the matter close enough attention or had allowed extraneous matters to cloud its consideration, as we have observed above. We are, however, not satisfied that the Commission at first instance did not give sufficient reasons so as to comply with its statutory duty to give reasons. We say that because only one segment of the decision was not the subject of reasons. That segment was the determination of the date of operation of the orders, as we have said. There was therefore, in our opinion, no error of law so as to void the decision ab initio.

Next, it was alleged that the Commission at first instance erred by failing to properly consider the low paid nature of the employees covered by the awards. There was evidence from David Joseph Kelly that the vast majority of the appellant's members employed under the subject awards were paid less than $400.00 per week. The average weekly earnings set out in exhibit K3 (page 244 of the appeal book), the Australian Bureau of Statistics Catalogue of Average Weekly Earnings States and Australia as at August 1994, show clearly that, in this State, average weekly earnings were just over $500.00 for men and for women about $383.00. There was ample evi-

dence therefore that these employees were lower paid employees, since there was uncontroverted evidence that the majority of the appellant's members employed under the awards were paid less than $400.00 per week. No evidence to the contrary was given. It was therefore open to the Commission to find that these were lower paid workers. It was open, too, to the Commission to find that there were special circumstances (within the meaning of s.39(3)(b) of the Act) to give retrospective effect to the variation, given that the applications had been lodged in November 1994, that the hearing did not take place until 30 May 1995, and that the decision was not delivered until almost 12 months later, namely 3 October 1995, that the orders be made retroactive. Such a view would be fortified by the fact that the Third Safety Net Adjustment payment was required to be made prior to 1 July 1996 (see the State Wage Decision 75 WAIG 23 at 31-33 (CICS). There the Commission said—

> "It is emphasised that negotiations involving offsetting should be conducted within the context that it is the object of the wage fixing system under which a programme for wage adjustments has been provided that all employees will receive a minimum wage increase of $24.00 per week over a period of more than four and a half years from 1 November, 1991 to 1 July, 1996."

The Second and Third Arbitrated Safety Net Adjustments were to be made available at award level operating from the first pay periods commencing on or after 22 March 1995 and 22 March 1996 respectively (see 75 WAIG 23 at 35 (CICS) and see also the Supplementary State Wage Case Decision 75 WAIG 40 at 41 (CICS)).

There was a further ground of appeal, namely that the date of operation was inconsistent with the intention of the State Wage Decisions, to which we have just referred, that all workers under State awards should receive a $24.00 increase between 1 November 1991 and 1 July 1996. Plainly, of course, because Principle 8(3)(b)(ii) required that the third $8.00 per week Arbitrated Safety Net Adjustment would be available no earlier than the first pay period commencing on or after 22 March 1996, provided that, inter alia, at least 12 months had elapsed between the second and third award level Arbitrated Safety Net increases, it would not be possible, consistent with the Wage Fixing Principles, for the third payment to be made within time, given the date of operation of the variation fixed by the Commission. Thus, to order the variation to operate from September 1995 would prevent the payment of the Third Arbitrated Safety Net Adjustment being made before 1 July 1996 in accordance with the Principles. In those respects and for those reasons, the Commission at first instance erred in the exercise of its discretion. In order to comply with the Principles and so that the employees would not be disadvantaged, having regard also to the fact that these were lowly paid employees, and also having regard to the delay between the date of hearing, May 1995, and the issue of the orders five months later, all of which were relevant factors, the Commission was entitled to take into account the exercise of discretion miscarried. Further, the Commission should have found that those factors existed and taken them into account. Having taken them into account, a proper exercise of the discretion of the Commission required that the variation of the awards to provide for the $8.00 per week payment be made operational at least as and from 30 May 1995, the date of the hearing. These were all therefore special circumstances within the meaning of s.39 of the Act which would enable the Commission to rightly fix the operation of the orders as commencing at 30 May 1995. In any event, it is fair to add that it did not appear how the Commission at first instance reached the result embodied in its orders, and because the decision as to retroactivity was plainly unreasonable we would hold that the Full Bench should infer that in some way there had been a failure properly to exercise the discretion which the law reposed in the Commission at first instance (see House v The King (op cit) (HC) at page 505 per Dixon J). The Commission erred in failing so to do. Its discretion miscarried for the above reasons, in terms of the test set out in House v The King (op cit) (HC). We are satisfied that all of those factors which we have mentioned above should be taken into account and it was open to the Commission to find that they should be. We would now find in terms of what we have outlined above in the exercise of the Full Bench's discretion and substitute an operative date of 30 May 1995.

Ground 2 (read with Ground 3)

This ground alleges that the Commission at first instance erred in inserting the clause—Enterprise Flexibility Provisions which it did and in not inserting a clause in the terms set out in the applications at first instance.

We should say that the Commission is bound to apply the Wage Fixing Principles (see RRIA v AMWSU and Others (op cit) (IAC)).

Since part of the submission was that the provision by way of variation was inserted contrary to the intent of the State Wage Decision (75 WAIG 23 (CICS)), it is necessary to consider the relevant provisions of the Wage Fixing Principles. The Commission in Court Session in that decision, which gave effect to the Statement of Principles formulated in the Australian Commission in August 1994 (the 1994 State Wage Decision 75 WAIG 23 at 24 (CICS)), observed that the decision to provide for three $8.00 per week Arbitrated Safety Net Adjustments represented—

> "an appropriate balance between three objectives:
>
> - maintaining an award system that provides for relevant wages and conditions of employment;
> - promoting enterprise bargaining by maintaining an incentive to bargain; and
> - facilitating the review of awards under Section 150A."

At 75 WAIG 23 at 26 (CICS) the Commission in Court Session observed—

> "The objectives of the wage fixing system in this State which give effect to the National Wage Decision should identify that priority is given to enterprise bargaining, that parties at an enterprise take responsibility for their own industrial relations affairs and that Structural Efficiency continues to have relevance to the award system which underpins enterprise bargaining."

The Commission in Court Session said, too, quite categorically, that the wage fixing system (see 75 WAIG 23 at 26 (CICS))—

> "... must provide an orderly approach to wage determination in the award system which remains available to parties unable to reach agreement at the enterprise level while still maintaining an incentive for them to continue to bargain for an agreement."

The Commission in Court Session had explained that one of the objectives was to (see 75 WAIG 23 at 26 (CICS))—

> "• ensure that priority in the system is on the parties at an enterprise—employers, employees and registered organisations—to take responsibility for their own industrial relations affairs and reach agreements appropriate to the enterprise."

The Commission in Court Session there specifically recognised in its decision the part to be played by registered organisations in this process. One Principle, in fact, refers to the role of arbitration and the award system (see also 75 WAIG 40 (CICS)). The Commission also observed (75 WAIG 40 (CICS)) that—

> "The term "enterprise flexibility agreement" does not have any statutory basis under the Industrial Relations Act, 1979 ('the Act') and as we have said in our Reasons for Decision dated 30 December 1994, we do not seek to import any such legislative provision from the federal act."

The Commission there specifically declined to import a provision which recognises enterprise flexibility clauses. The Commission nonetheless said (see 75 WAIG 40 at 41 (CICS))—

> "The Commission shall promote and facilitate enterprise bargaining by the inclusion of enterprise flexibility clauses in awards which are consistent with the objectives that parties take responsibility for their own industrial relations affairs and reach agreement appropriate to the enterprise."

In Section 2, Part 2, "Consent Award or Award Variations to Give Effect to an Enterprise Agreement", the Commission in Court Session made this observation (see 75 WAIG 40 at 41

(CICS))—

> "If the Commission considers that the onus has been satisfied a consent award or consent variation to an award may be made to give effect to an enterprise agreement between parties bound by an award ..."

What is made quite clear in all of the Statements of the Principles by the Commission in Court Session is that an integral part of enterprise bargaining comprises of registered organisations who are parties to the award. Further, the award which underpins enterprise bargaining is inextricably linked to the process. In other words, enterprise bargaining does not occur and is not separate from the existence of an award. Indeed, awards may (as is recognised) be varied to reflect an enterprise bargaining agreement. That is in the case where an enterprise bargaining agreement registrable under s.41 of the Act is not achieved. The place of registered organisations of both employers and employees in enterprise bargaining is recognised by the Wage Fixing Principles, as we have said, and the extracts to which we have referred bear that out quite unequivocally. That place is also recognised by the fact that the Principles acknowledge and support an award based concept involving registered organisations which are, as the appellant is, a party to the awards sought to be varied and which are parties to such awards by right of constitutional coverage of employees subject to the awards. An award cannot be sought to be varied except by an organisation or association named as a party to it (or an employer who is bound by the award) (see s.40 of the Act). No-one else can apply for a variation. A s.41 agreement cannot be registered unless it is made between an organisation or association of employees and any employer or organisation of employers.

The Act encourages the formation of representative organisations of employers and employees and their registration under the Act (see s.6(e) of the Act). That is what, of course, underpins the Principles. The Principles relate to an award based system of industrial regulation. In this State, there is another distinct and separate system contained in the Workplace Agreements Act 1993 which is entirely different. The Commission in Court Session observed, as we have said above, that the Federal concept of enterprise flexibility is not imported into the State system by the Principles (the Federal provisions are set out in s.113A and s.113B of the Industrial Relations Act 1988 (Cth) (as amended)). Quite clearly that concept is not. The true nature of the system created by the State Wage Fixing Principles is based on the cornerstone Structural Efficiency Principle. The Enterprise Bargaining Flexibility provisions came into the Wage Fixing System under the Structural Efficiency Principle as long ago as April 1991 (National Wage Decision 1991 (Print J7400)). The Wage Fixing System in this State has continued to be based on the Structural Efficiency Principle and does not import the statutory enterprise flexibility requirements of s.113A and s.113B of the Industrial Relations Act 1988 (Cth) (as amended). These sections came into operation in 1994 (Act No 98 of 1993). The Structural Efficiency Principle and the place of organisations in the system are also recognised by the dicta of the Commission in Court Session in the 1994 State Wage Case Decision (75 WAIG 23 at 29) as follows—

> "• 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"

There is no provision equivalent of or similar to either s.113A or s.113B of the Industrial Relations Act 1988 (Cth) (as amended). To a great extent, the Commission's orders erroneously have been made as if s.113A and s.113B were provisions of the Act.

The Commission inserted a clause in this case which purports to exclude the applicant being engaged in negotiations with employers to achieve enterprise agreements. To do so is to provide a mechanism which might exclude an organisation which is a party to the award and represents employees covered by the award doing what it is entitled to do. The orders really set out, too, to create workplace agreements outside the framework of that Act, notwithstanding that in this State there are two separate systems, one the workplace agreement system created by the Workplace Agreements Act 1993, and the other, the award based system to which the Wage Fixing Principles apply. Further, the provision in the variation ordered by the Commission at first instance, which enables agreements to be made to which the appellant is not a party or not engaged in the negotiations, is contrary to the Principles, as we have illustrated above. The only way in which a variation to the award can be made on behalf of employees is by the applicant. The only way in which a s.41 agreement, which reflects an enterprise bargaining agreement, can be registered on behalf of employees is by the applicant. The clause inserted purported to provide a mechanism for employees to enter into agreements themselves with an employer to the exclusion of the appellant. There is no provision in the Act to enable this to occur. There is no provision within the Principles to enable this to occur. The Principles, as we have said, enable only s.41 agreements or award variations to reflect an enterprise bargaining agreement. Both mechanisms are only valid and enforceable because the Act provides for them. The clause is therefore contrary to the Principles.

It is also alleged in this ground that the Commission at first instance erred in failing to consider the nature of the workforce covered by the awards and to properly consider the low paid nature of the workforce covered by the awards. We are not certain that the Commission did so err, and we are not persuaded that, in any event, those matters were necessarily relevant.

However, the enterprise flexibility provision proposed by the appellant, at first instance, properly reflects a process which involves the organisation which has the only power to deal with these matters under the Act and in accordance with the Principles right through to variation of the awards or to the registering of an agreement.

For the reasons which we have set out above, the Commission at first instance erred in the exercise of its discretion in that it failed to apply the Principles, as it was bound to do, (and further failed to take account of the provisions of the Act. The Commission, in fact, acted as if it were bound by s.113A and s.113B of the Industrial Relations Act 1988 (Cth) (as amended), which it is not). In that it erred. The Commission's discretion therefore miscarried and we would substitute, in the exercise of the discretion of the Full Bench as properly reflecting the Principles and complying with them, the clauses proposed by the appellant. That conclusion we reached applying the reasons set out above as to the merits of the appellant's applications at first instance, and making all necessary findings based on those reasons. We have considered carefully all of the submissions made to us and all of the evidence and other material before the Full Bench. We would uphold the appeals for those reasons. We would vary the decisions at first instance accordingly and issue a minute to reflect these reasons.

HALLIWELL SC: The Industrial Relations Act section 39(3)(b) provides:—

> "(3) The Commission may by its award give retrospective effect to the whole or any part of the award—
>
> (a) .....
>
> (b) if in the opinion of the Commission there are special circumstances which make it fair and right so to do but...."

In my respectful opinion the non provision of reasons for decision at all as to what were the "special circumstances" which made it "fair and right" to order retrospectivity nor any reasons for selecting the date 1st September 1995 brings this matter within R.R.I.A. v AMWSU and Others (69 WAIG 900) and specifically Nicholson J.'s reasons at pages 996-999. Therein His Honour held that section 35(1) of the Act creates a mandatory obligation upon the Commission to give reasons for its decisions.

Further, the Full Court of the Federal Court (Dornan and Others v Riordan and Others (95 ALR 451 at 460) held that a failure to state reasons for decision where the stature requires the same in exercising the decision making power causes an error of law. Where, as here, the statute requires the forming of an opinion that "there are special circumstances which make it fair and right to do ..." then what those circumstances were and why they led the Commission to the conclusion that it was therefore "fair and right" to award retrospectivity were, in my respectful opinion, required to be given. They were not, and thus an error of law occurred which I think voids the order made so far as the retrospective operation of the order is concerned. In all other aspects of the appeal I respectfully agree with the reasons of the Hon President and have nothing further to add.

THE PRESIDENT: For those reasons, the appeals are upheld and the decisions at first instance varied accordingly.

Order accordingly

Appearances: Ms S Jackson on behalf of the appellant.

Mr P G Robertson on behalf of the respondents for whom warrants have been filed.

No appearance by or on behalf of any other respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
(Appellant)

and

Ngala Family Resource Centre and Others
(Respondents).

Nos. 1172, 1173, 1174, 1175, 1176, 1177 and 1183 of 1995.

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

16 May 1996.

Order.

These matters having come on for hearing before the Full Bench on the 22nd day of February 1996, and having heard Ms S Jackson on behalf of the appellant and Mr P G Robertson, as agent, on behalf of the respondents for whom warrants have been filed, and there being no appearance by or on behalf of any other respondents, and the Full Bench having reserved its decision on these matters, and reasons for decision being delivered on the 16th day of May 1996 wherein it was found that the appeals should be upheld, it is this day, the 16th day of May 1996, ordered and directed as follows—

(1) THAT time be and is hereby extended to and including the 6th day of December 1995 to enable the appellant herein to file and serve an application to file and serve an application to extend time for filing appeal books.

(2) THAT time be and is hereby extended to and including the 20th day of November 1995 for the appellant herein to file and serve appeal books.

(3) THAT appeals Nos 1172, 1173, 1174, 1175, 1176, 1177 and 1183 of 1995 be and are hereby upheld and the decisions of the Commission in applications Nos 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994 made on the 3rd day of October 1995 be and are hereby varied as follows—

(a) THAT the operative date of "1 September 1995" wherever the same appears in the decisions of the Commission in applications Nos 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994 be deleted and a new operative date to read "30 May 1995" be substituted therefor.

(b) THAT the new clause "Enterprise Flexibility Provisions" referred to in paragraph 3 of each of the Schedules to each of the decisions of the Commission in the following applications be varied by deleting such clauses in the said Schedules to the applications as follows—

(i) in application No 1090 of 1994—clause 38—Enterprise Flexibility Provisions

(ii) in application No 1091 of 1994—clause 41—Enterprise Flexibility Provisions

(iii) in application No 1102 of 1994—clause 40—Enterprise Flexibility Provisions

(iv) in application No 1121 of 1994—clause 38—Enterprise Flexibility Provisions

(v) in application No 1129 of 1994—clause 44—Enterprise Flexibility Provisions

(vi) in application No 1135 of 1994—clause 38—Enterprise Flexibility Provisions

(vii) in application No 1146 of 1994—clause 45—Enterprise Flexibility Provisions

and by substituting in paragraph 3 of the said Schedules in the said decisions as numbered hereunder, under the following numbers—

(i) No 1090 of 1994—clause 38

(ii) No 1091 of 1994—clause 41

(iii) No 1102 of 1994—clause 40

(iv) No 1121 of 1994—clause 38

(v) No 1129 of 1994—clause 44

(vi) No 1135 of 1994—clause 38

(vii) No 1146 of 1994—clause 45

the following clause "Enterprise Flexibility Provision"—

"ENTERPRISE FLEXIBILITY PROVISION

(1) At each enterprise or workplace, a consultative mechanism and procedures shall be established, comprising representatives of the employer, employees and the Union.

(2) The purpose of such consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise and/or workplace according to its particular needs.

(3) The particular mechanism and procedure established shall be appropriate to the site (sic), structure and needs of the enterprise and/or workplace.

(4) Where agreement is reach at an enterprise and/or workplace through such mechanism and procedure, and where giving effect to such agreement required this award, as it applies at the enterprise and/or workplace, to be varied, an application to vary shall be made to the Commission.

(5) The agreement shall be made available in writing, and be filed with the Commission.

(6) Where an agreement made pursuant to this clause varying this award is approved it shall become a Schedule to this award, and the agreement shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.

(7) The agreement must meet the following requirements.

(a) The purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;

(b) The majority of employees must genuinely agree to the change;

(c) No employee shall lose income as a result of the change;

(d) The Union must have been involved in the consultative mechanism or process:

(e) No employee is disadvantaged as a result of the agreement through reduction of any award or other legal requirements or protections, in the context of their terms and conditions of employment considered as a whole.

(f) The Commission safety net standards are not diminished.

(8) Any dispute arising in relation to these matters will be dealt with in accordance with the award disputes procedure."

By the Full Bench

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

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial Union of Workers, West Australian Branch
(Appellant)
and
Action Food Barns (WA) Pty Ltd and Others
(Respondents).

No. 85 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER S A CAWLEY.

28 May 1996.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission, constituted by a single Commissioner, made on 3 January 1996 and 11 January 1996 in application No 1086 of 1995. The decision was that the Meat Industry (State) Award 1980 (hereinafter referred to as "the award") be varied and that such variation have effect from the beginning of the first pay period commencing on or after 8 December 1995.

The appellant now appeals against that decision on the following grounds (see page 3 of the appeal book (hereinafter referred to as "AB"))—

"1. The Senior Commissioner erred in holding that the Safety Net Adjustments should only apply to tally workers where only tally is worked or paid in any one day in that the decision denies any Safety Net Adjustment to workers who work over tally both in relation to:

1.1 work done in achieving tally; and

1.2 work done over tally

and is thereby offensive to the Wage Fixing Principles and the equity, good conscience and substantial merits of the case.

2. The Senior Commissioner erred in that he made conclusions of fact without any evidence having been adduced."

BACKGROUND

The appellant is an organisation of employees who work in the meat industry and are subject to the award. The respondents are employers of employees who work in the meat industry and are bound by the award. The appellant is a party to the award.

The appellant applied to vary the award pursuant to s.40 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") in terms of Schedule C (see page 16 (AB)) to the application. The application was made in order to increase the meal allowances, the minimum wage and the wage rates to provide for a further Safety Net Adjustment. The application was said to have been made for the purpose of updating the award in accordance with current Wage Fixing Principles. It was certainly made in order to incorporate the second $8.00 per week Safety Net Adjustment.

The respondents did not oppose the variations sought, save and except for the application of the $8.00 Arbitrated Safety Net Adjustment to the calculation of tally and overtally payments, which payments are provided for in clause 29—Work of Employees in Boning Rooms and clause 30—Work of Employees in Slaughtering of the award. There was no opposition by the employer to this amount being paid where tally only was paid on any one day.

Importantly, when the award was varied to make provision for the first $8.00 per week Safety Net Adjustment, the parties, by consent, had reserved the issue of tally work wage rates to await a decision on that issue by the Australian Industrial Relations Commission. The Commission at first instance so found.

On 5 December 1994 Boulton J, in the Australian Industrial Relations Commission, issued a decision (Print L7360) which determined that question in relation to tally workers in relation to some 10 Federal awards (see In Re S.113 Applications For Variation—AMIEU (delivered 5 December 1994)). In that matter, His Honour ordered that the awards be varied to include the first Arbitrated Safety Net Adjustment, applying it inter alia to employees who had achieved overtally (see page 10 (op cit)).

The Commission at first instance found that, having regard to the 1992, 1993 and 1994 State Wage Decisions reported respectively at 72 WAIG 191, 74 WAIG 198 and 75 WAIG 23, a fundamental purpose of the Award Safety Net Wage Adjustments was that lower paid employees and employees who had not benefited from bargained wage increases should receive a flat wage increase.

Further, the Commission found that, in the award, the effect of two Safety Net increases would produce an increase of up to $40.00 per week for tally workers. Therefore, if the amount of the Safety Net increase were applied to overtally payments, then there would be a compounding effect.

The Commission then held that such a result was never intended under the Principles and that the level of the monetary increase was brought about by the completion of tally usually in three to five hours of work, depending on the type of animal being processed. Overtally is not an overtime payment, but a true incentive payment, the Commission found, and this, the Commission held, was the basic difference between the Federal and State awards.

The Commission then refused the application insofar as it related to the all-purpose rate for overtally purposes (see page 51 (AB)).

CONCLUSIONS

This application was made to vary the award to enable the $8.00 per week Second Safety Net Adjustment to be applied to the wages of tally employees under the award.

The crux of the respondent employers' opposition was that these employees were higher paid workers and not entitled to the Second Safety Net Adjustment under the Principles, and, further, that the Safety Net Adjustment payment should be a flat amount of $8.00 per week for workers covered by the awards and should not be paid where it would be compounded in cases where employees were in receipt of tally payments.

The employees concerned in this application are boners, slicers and slaughtermen, as they are named in the award (see clauses 29 and 30 of the award) where their work is also prescribed. These employees are not paid the minimum rate under clause 9 until they achieve each day a tally, that is they produce a prescribed number of what I will call processed meat items, for example sides of beef or carcasses of sheep, goats, vealers or pigs. In the case of slaughtermen, when they kill and dress a prescribed number of animals (see clauses 29(2) and (3) and 30(1)), in a day, they achieve tally. Once the daily tallies or the equivalent thereof are exceeded, a tally employee is required to be paid a rate of one and a half for each carcass or equivalent processed (see clauses 29(9)(a) and 30(5)(b)). However, no overtime is to be paid to a person "on tally" (see clauses 12(2)(a), 29(9)(a) and 30(5)).

Clause 12(2)(a) expressly distinguishes between employees who work overtime and those who work overtally. Indeed,

an employee "on tally" is not paid overtime or penalty rates for work done on weekends and public holidays, but is paid penalty rates which are calculated on the number of carcasses processed in the same way as tally is. The system is an incentive system perhaps, as the Commission at first instance found.

It was not disputed that employees entitled to overtime payments under this award or any other award were entitled to the Safety Net Adjustment payments, even though the payment of $8.00 to an employee earning substantial overtime amounts every week would compound on the overtime payments too.

I now turn to the Wage Fixing Principles themselves. The Commission is bound to apply them (see RRIA v AMWSU and Others 73 WAIG 1993 (IAC) per Nicholson J), and the Commission was required to apply the Principles in this case.

Principle 8 is the "Arbitrated Safety Net Adjustments Principle" (see the State Wage Decision 1994 (supplementary reasons) (75 WAIG 40 at 42)). The State Wage Decision of December 1994 prescribed that both minimum rates and paid rates awards "may be varied to include three $8.00 per week Arbitrated Safety Net Adjustments". The prescribed intent of the Statement of Principles was "to ensure that all employees covered by awards" (my underlining) would "receive a minimum wage increase of $24.00 per week over a period of more than four and a half years from 1 November, 1991 to 1 July, 1996". I interpret the Principle in the context of the whole of the 1994 State Wage Decision, the Principles themselves and the General Orders, in the way prescribed for any legal document. First, I give the words of the decision and the Principles their ordinary and natural meanings, unless that leads to absurdity or ambiguity.

There are some conditions precedent which are required to be complied with before each of the three Arbitrated Safety Net Adjustments payments is ordered to be paid. These are set out in the State Wage Decision 1994 (supplementary reason) (75 WAIG 40 at 42). However, the Principle plainly is meant to ensure that all employees covered by awards will receive $24.00 in the time prescribed. There is no definition of low paid employees, and no exclusion of any class of employees, whether low paid, highly paid, skilled, unskilled or whether paid by tally or by time. All employees covered by awards are included. The words "all employees covered by awards" are clear and unequivocal; nor can I read anything or was I taken to anything in the Principles which contradicts those clearly expressed words of intent. The subject Principle exists to ensure that all employees covered by the award receive the three payments totalling $24.00. I therefore see no scope for any argument that tally workers should be excluded from the benefit of the Principle because they are not low paid workers or because, to make the variation sought, might compound payment. Boulton J recognised that, too, in the case to which I have referred (see Print L7360 at page 7).

The point, having regard to the fact that the Principles bind the Commission and the requirement in this case, is not relevant.

Further, a minimum wage increase is to be ensured by the Principle. That is, such a wage increase is required to be implemented. To that end, an incidental increase by way of compounding is not at all a relevant consideration. All employees covered by awards are to receive a $24.00 increase; which is properly designated "flat".

The $8.00 payments were and are plainly flat $8.00 payments which when paid were to achieve in total the payment of the amount of $24.00 in the period prescribed to all employees covered by the awards. That is what the Principle was intended to achieve.

Accordingly, if it were necessary to so find, one could find that there is no difference between paying the amount to time employees who work overtime from paying tally employees who are paid overtally and not paid overtime. It matters not, therefore, that the tally is an incentive payment, if it is.

The Commission at first instance was required by the Principles, which it was bound to apply, to order the payment where the conditions precedent prescribed for each adjustment have been complied with. In failing to do so the Commission erred. Further, for other reasons which I have set out, the equity and substantial merits of the case required it.

I now turn to a submission by Mr Momber (of Counsel) that the appellant had not established at first instance that it had complied with the conditions precedent which were required to be complied with by the appellant before the orders sought could be made.

Mr Schapper (of Counsel) submitted that the respondents, not having opposed the variation of the award, save and except for the payment of Safety Net Adjustment amounts in respect of overtally earnings, had conceded that the conditions precedent had been complied with. Certainly, the matter was not argued at first instance. The application was partly opposed, as the answer reveals, on narrow and specific grounds which raised no question of any failure to comply with the conditions precedent to which I have referred. Under s.49(4) of the Act, that argument should not now be entertained. Further, Metwally v University of Wollongong 60 ALR 68 (HC) requires the respondent to be bound by its own case at first instance. In addition, although it is not necessary to so find, it may well be estopped from pleading otherwise (see Commonwealth of Australia v Verwayen 95 ALR 321 (HC)).

I would add that I see no substance in Mr Momber's submission that the first payment was the subject of a decision and that that decision could not be later affected by a decision in relation to its application to overtally earnings, when the Commission at first instance properly found otherwise by its decision. The Commission, in fact, found that the decision to order the first Safety Net Adjustment payment was made, without objection, on the understanding that the question of whether the $8.00 per week Safety Net Adjustments payment could be applied to overtally earnings, would be argued and decided later. There was no objection at first instance, either, to this course being pursued.

I have carefully considered all of the material before the Full Bench and all of the submissions made.

For those reasons ground 1 is made out. It is not necessary to consider ground 2. I would uphold the appeal, the discretion having miscarried, and I so finding on the basis of House v The King [1936] 55 CLR 499 (HC). I would find, for the reasons which I have set out, making any necessary findings to that end in accordance with those reasons, that the application should have been granted and would substitute my decision for that of the Commission at first instance and vary the order by substituting an order for payment of the second amount of $8.00 by way of Safety Net Adjustments. As to the operative date of such variation, it would seem that both Mr Darcy on behalf of the members of the Meat and Allied Trades Federation of Australia (Western Australian Division) at first instance and Mr Kucera for the applicant at first instance (the appellant on appeal) were agreeable to a date for the commencement of the operation of the payment of the Second Safety Net Adjustment for tally and overtally employees as being the first pay period commencing on or after 19 December 1995 (see pages 9 and 11 of the transcript at first instance). That therefore will be the operative date which should be included in the minutes of proposed order. That variation should also be made to the order at first instance.

I would issue a minutes of proposed order to reflect these reasons.

CHIEF COMMISSIONER COLEMAN: I have had the advantage of reading the Hon. President's draft Reasons for Decision. I agree that the first ground of appeal has been made out.

The Commission was, as a matter of law, obliged to apply the 'Statement of Principles' pursuant to the General Order in No. 985 of 1994 (*75 WAIG 40*). In the absence of any submissions that the tests set out in the Second Arbitrated Safety Net Adjustment Principle could not be met because of the particular nature of the scheme of incentive payments ("tally") for certain classifications under the Meat Industry (State) Award 1980, the Commission, at first instance, was required to adjust the rates at the award level for $8.00 per week.

The application of the Second Arbitrated Safety Net Adjustment Principle at the award level does not comprehend any difference between award rates determined by reference to ordinary hours of work (with penalty rates for work performed outside those hours) and award rates determined by reference to a notional unit under a scheme of incentive payments. It is, as the appellant argued, contrary to the Wage Fixing Princi-

ples to impute some limitation in the application of the $8.00 per week "flat" adjustment to the minimum award rate when there is none. It is not the case that the second arbitrated safety net adjustment circumscribes the availability of the "minimum wage increase of $24.00 per week over the period of more than four and a half years from 1 November 1991 to 1 July 1996" to circumstances where employees working under the incentive payments scheme achieve only tally or when they are on sick leave or annual leave.

In my view, reference by the parties in the first instance to the determination of the Australian Industrial Relations Commission in Federal meat industry awards was irrelevant (*Print L7360*). First, although employees were "tally workers" in classifications under those awards, the incentive payments scheme was different from that which applies under the Meat Industry (State) Award 1980. Second, the Statement of Principles which operates as a matter of law in this jurisdiction cannot be applied nor reinterpreted in the light of the ongoing application of the National Wage Decision (*Prints L4700 and L5300*) by the Australian Industrial Relations Commission.

With the acceptance that the second arbitrated safety net adjustment applied to award classifications paid by tally, the Commission was required to apply the Principle in its terms. The discretion as to whether the tests had been met (or could be met) was not called into question with respect to the award because it included incentive payments. If it had been the case that the specific requirements set out in the Principle could not be satisfied with respect to the award because it included tally arrangements, then recourse would have to be taken through the Special Case Principle. However, that was an issue at the time.

I agree that an order should issue which gives effect to the payment of the $8.00 per week at the award level in accordance with the Second Arbitrated Safety Net Adjustment Principle and that the increase should operate from the first pay period commencing on or after 19 December 1995.

It is noted that there is a typographical error in the Schedule to the order which issued. The full stop on line seven after "Slaughtering" in clause 9.—Rates of Wages should be deleted. This should be addressed by the parties.

COMMISSIONER CAWLEY: By this application the Australasian Meat Industries Employees Union Industrial Union of Workers West Australian Branch ("the appellant") appeals against decisions of the Commission given on 3 and 11 January 1996 in matter numbered 1086 of 1995.

The background to the orders which issued is briefly as follows.

When the hearing of No. 1086 of 1995 proceeded the appellant and respondents were agreed on all but one issue. The application sought to have the second $8.00 Arbitrated Safety Net Adjustment increase available under the Wage Fixing Principles apply to the base rate of each classification in the Meat Industry (State) Award 1980. One effect of this would be a flowing through of this increase to tally and over tally payments. For reasons which go to the history of the award in relation to the first Arbitrated Safety Net Adjustment, that increase would affect these payments too. The respondents accepted that the increases available under the Arbitrated Safety Net Adjustments should be applied to the award but disagreed with the appellant as to its application to tally and over tally payments. They argued that there should only be an increase for these workers when just tally was worked or when only the base rate was paid to such workers.

After hearing the parties the Commission decided to order the variations to the award which had been put to him on a consent basis and to consider further the issue of the application of the increases to tally and over tally payments. In relation to these an interim measure was adopted by the Commission pending a further determination.

That is, the Commission decided that the increases available under the Arbitrated Safety Net Adjustment Principle of the Wage Fixing Principles should be applied to the award, and then proceeded by the order which issued on 3 January 1996 to vary the award to give effect to this but reserving for further consideration the question raised in the hearing as to how the increase was to be given effect in relation to tally and over tally.

Thus the schedule to the order which issued on 3 January 1996 included a provision in Clause 9.—Rates of Wages as follows—

> 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.

By way of a further order dated 11 January 1996 the Commission effectively endorsed the respondents' position by rejecting the appellant's claim with respect to the application of the Arbitrated Safety Net Adjustment increase to tally and over tally payments and the terms of the order of 3 January 1996 and its schedule stayed in force.

The appellant's two grounds of appeal can be summarised to the effect that the Commission's decision, which purported to be giving effect to the Wage Fixing Principles, was in error and that conclusions of fact were made by the Commission without any evidence being adduced.

The Wage Fixing Principles in force for the purposes of this matter resulted from the Commission In Court Session's decision in matter numbered 985 of 1994 [(1996) 75 WAIG 237]. The prerequisites for each of the available Arbitrated Safety Net Adjustment increases are specific and identified in the statements of that Principle. The purpose of the Arbitrated Safety Net Adjustments is also specified. In particular, the Commission In Court Session stated—

> The intent of the Statement of Principles with respect to "Arbitrated Safety Net Adjustments" is to ensure that all employees covered by awards will receive a minimum wage increase of $24.00 per week over a period of more than four and a half years from 1 November, 1991 to 1 July, 1996.
>
> [(1995) 75 WAIG 40]

No issue was raised before the Commission at first instance as to any prerequisite or impediment to the application of the second Arbitrated Safety Net Adjustment to the Meat Industry (State) Award 1980 was found by the Commission and no issue was taken on that point. In effect, the parties approached the Commission on the basis that the prerequisites for the second Arbitrated Safety Net Adjustment were satisfied. The Commission in accepting that was obliged then to vary the award in accordance with that Wage Fixing Principle.

The Commission purported to do this but in fact effectively deprived those employees on tally and over tally payments from any increases when only tally was achieved or when employees subject to tally and over tally payments were paid the award wage because, for instance, they were on annual leave.

The decision of the Commission was based on his conclusion that the Arbitrated Safety Net Adjustment was not intended to result in other than a flat increase of $8 per week to all "lower paid employees and employees who had not benefited from bargained wage increases" [Reasons for Decision, Appeal Book, page 51]. He went on to conclude that in the Meat Industry (State) Award 1980 "the effect of the two Safety Net Increases would produce an increase of up to $40 per week for tally worker" and that was "a result was never intended under the Principles **...**".

This reasoning is flawed. The effect of the Commission's decision is that the employees affected by his exclusion do not in fact get any increase per week other than in the limited circumstances provided for. This can not be reconciled with the Wage Fixing Principles on the reasoning the Commission applied as the outcome is contrary to the obligation, subject to the prerequisites having been satisfied, to give effect to the Arbitrated Safety Net Adjustments to ensure that a minimum increase results.

In my opinion the first ground of the appeal has been made out. That being so it is not necessary to deal with the second ground of appeal.

I would uphold the appeal and vary the decision to give full effect to the second Arbitrated Safety Net Adjustment Principle in the Meat Industry (State) Award 1980.

THE PRESIDENT: For those reasons the appeal is upheld and the decision of the Commission at first instance varied.

Order accordingly

Appearances: Mr D H Schapper (of Counsel), by leave, on behalf of the appellant.

Mr J Uphill, as agent, on behalf of Woolworths (WA) Limited and Stamco Pty Ltd t/a Stammers Supermarkets.

Mr P Momber (of Counsel), by leave, on behalf of the Meat and Allied Trades Federation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial Union of Workers, West Australian Branch
(Appellant)

and

Action Food Barns (WA) Pty Ltd and Others
(Respondents).

No. 85 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER S A CAWLEY.

28 May 1996.

Order.

THIS matter having come on for hearing before the Full Bench on the 3rd day of April 1996, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the appellant, Mr J Uphill, as agent, on behalf of Woolworths (WA) Limited and Stamco Pty Ltd t/a Stammers Supermarkets and Mr P Momber (of Counsel), by leave, on behalf of the Meat and Allied Trades Federation, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 28th day of May 1996 wherein it was found that the appeal should be upheld, it is this day, the 28th day of May 1996, ordered as follows—

(1) THAT appeal No 85 of 1996 be and is hereby upheld.

(2) THAT the decision of the Commission in application No 1086 of 1995 made on the 11th day of January 1996 be and is hereby quashed and the decision of the Commission in application No 1086 of 1995 made on the 3rd day of January 1996 be varied by substituting an order for payment of the second amount of $8.00 by way of Safety Net Adjustments, and by inserting an operative date for such variation being the first pay period commencing on or after the 19th day of December 1995 in the following terms—

(a) By inserting in the last line of such order after the figure "1995" the following ", save and except for those Arbitrated Safety Net Adjustments applicable hereby 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 where such variations shall have effect from the beginning of the first pay period commencing on or after the 19th day of December 1995".

(b) By amending the new clause 9.—Rates of Wages on page 1 of the Schedule to the said order as follows—

(i) By deleting the word "not" from the fifth line of the said clause 9.

(ii) By deleting the comma after the word "Award" in the seventh line of the said clause 9 and in substituting therefor a full stop.

(iii) By deleting the words "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" from the seventh and eighth lines of the said clause 9.

By the Full Bench

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

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tomislav Stankovski and Sevda Stankovska
(Appellants)

and

Quirk Corporate Cleaning Australia
(Respondent).

Nos 117 and 132 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY
SENIOR COMMISSIONER G G HALLIWELL
COMMISSIONER R N GEORGE.

10 May 1996.

Reasons for Decision.

THE PRESIDENT: These are the joint reasons for decision of Halliwell SC and myself.

These are two appeals against the decision of a single Commissioner, wherein the Commissioner dismissed two applications, one by each appellant, which initially claimed remedies for unfair dismissal, including reinstatement, and, in the end, claimed compensation and contractual benefits to which the appellants allege they were entitled and were not paid. It is against that decision that the appellants now appeal.

The appeals were heard together, since the appellants, who are husband and wife, were employed by the same employer, their employment was ended on the same day, the applications were heard together at first instance, the evidence given was relevant to both applications, Mr Stankovski appeared for both himself and as agent for the other appellant, his wife, as he had at first instance, and there was no likelihood that an injustice would be occasioned to the appellants by the Full Bench taking such a course.

The grounds of appeal, as we discern them from the documents filed herein (and from the submissions put by Mr Stankovski), were as follows—

(1) The Commission at first instance denied the appellants natural justice by failing to afford them a reasonable opportunity to be heard and thereby erred.

(2) The Commission erred by accepting evidence which the appellants claim to be untrue in preference to the evidence of the appellants, in particular Mrs Stankovska.

(3) There was an incident which occurred about 26 May 1995 which was connected to the dismissals on 30 May 1995 (the date referred to in the grounds), and the Commission should have so found.

(4) The Commission erred in failing to find that the respondent had failed to pay monies due and owing to the appellants for unpaid holidays, sick leave and unpaid wages from 17 December 1993 to 29 May 1995.

(5) The appellants were dismissed while Mrs Stankovska was ill and whilst her husband was entitled to be absent to look after her.

(6) The Commission erred in deciding that it did not have jurisdiction to make orders in respect of wages claimed without making the appellants aware of this situation at the outset of proceedings.

(7) The appellants claimed that they were owed monies for cleaning the front external area of the Bankwest Bassendean branch.

BACKGROUND

The appellants were employed as cleaners by the respondent from 1992 until the termination of their contracts on 30 May 1995. They worked together cleaning two banks in Bassendean, namely a branch of Bankwest and a branch of Westpac. They claimed that they were unfairly dismissed. However, the respondent claims that they resigned. Their contracts of employment were governed by the Contract Cleaners Award 1986, No A 6 of 1985 (hereinafter referred to as "the award"), as appears to have been common ground.

On 28 May 1995 Mrs Stankovska became sick and was taken to her doctor by Mr Stankovski. They arrived home late as a result. That evening, between 8.00 pm and 9.00 pm, the relieving contract manager employed by the respondent, Ms Anna Marjanovich, had visited the banks to locate Mr Stankovski and Mrs Stankovska with a view to asking them to clean up some dead cockroaches on the stairs of the Bankwest premises. The bank had so requested. That person did not find them there and therefore telephoned the appellants' home. She spoke by telephone to Mr Stankovski who told her that his wife was ill. Mr Stankovski advised her that he would carry out the work later.

The next day, Ms Marjanovich received telephone calls from both banks advising that the cleaning work had not been done at either premises. Ms Marjanovich then telephoned the home of the appellants and spoke to Mrs Stankovska. Ms Marjanovich's version of the conversation was that in the course of about half an hour of discussion Mrs Stankovska said that she and her husband were resigning and that she, Mrs Stankovska, was fed up. Accordingly, Ms Marjanovich came to pick up the keys to the two banks from Mrs Stankovska, which she said were given to her voluntarily and without any anger.

Mrs Stankovska denied that she and her husband resigned. What she claimed was that once the keys were taken they were unable to work. There was some evidence in which they attempted to link events involving problems with security to the termination of the contracts of employment.

Mr Stankovski said in evidence that if his wife had said that she resigned she did so under provocation, but Ms Marjanovich denied this and denied, in fact, that there was any anger in the discussion. There is no evidence that Mr Stankovski was present during any of this telephone discussion.

Both the appellants and Ms Marjanovich had known each other for 10 to 15 years. Ms Marjanovich said that this was from time to time on a social basis because they attended the same club and Mrs Stankovska had been her hairdresser. However, both Mr Stankovski and Mrs Stankovska denied that there was any social basis to their acquaintanceship with Ms Marjanovich.

FINDINGS OF THE COMMISSION AT FIRST INSTANCE

We summarise the findings and conclusions of the Commission at first instance hereunder—

(1) That the Commission preferred the recollection of Ms Marjanovich of the telephone conversation between Mrs Stankovska and Ms Marjanovich on 30 May 1995.

(2) That both the appellants resigned from their positions as cleaners with the respondent on 30 May 1995.

(3) That there was no dismissal of them effected by the company and therefore no ability in the Commission to hear and determine the claim under s.29(1)(b)(i) of the Industrial Relations Act 1979 (hereinafter referred to as "the Act").

(4) There was no ability on the part of the appellants to proceed with these claims under s.29(1)(b)(ii) of the Act, since they dealt with matters which arose from the provisions of the award under which they were employed, namely the Contract Cleaners Award 1986, No A 6 of 1985, and the Act excludes jurisdiction in those matters.

THE EVIDENCE

Because of the nature of the submissions on behalf of the appellants, it is necessary to briefly summarise the evidence. There was evidence from four witnesses in these applications at first instance. They were the appellants themselves, Mr Tomislav Stankovski and Mrs Sevda Stankovska, who were the only witnesses for the appellants, and Ms Anna Marjanovich and Ms Dianne Rowe, who were the only witnesses for the respondent.

Mr Stankovski gave evidence that he and his wife had not been paid for cleaning the verandah at one bank. His evidence did not reveal how this came about or what amount was claimed. He gave evidence that he was dismissed and that he did not go to work on 28 May 1995 because his wife was sick. He said that his wife was given two weeks off work by her doctor. That was on 28 May 1995. On 29 May 1995, Mr Stankovski said they were unable to go to work because Ms Marjanovich had taken their keys. He said that they were unable to telephone her to tell her that they could not work on the night of 28 May 1995 because he did not have her telephone number. He also added that the portable telephone was to expensive to telephone on. The night before, 28 May 1995, he did not tell Ms Marjanovich when he spoke to her on the telephone that his wife was ill. This was because he thought that she was going to settle down. Further, he said that he was going to do the cleaning later on. He did not however go and clean the banks because of his wife's illness. Because he did not have the keys to enter the banks he felt that he was dismissed, that is subsequently after Ms Marjanovich had collected the keys. He used the word "key". He did not contact Ms Marjanovich about this because he believed that she was not their boss. He did not ring the mobile telephone because this costs money. Mr Stankovski telephoned Ms Dianne Rowe, another employee and supervising employee, a week after. He did not have time to ring her before that, he said, because of his full-time job. Ms Rowe, according to Mr Stankovski, told him that she did not know anything and she did not offer to follow the matter up. He said that he knew Ms Marjanovich for 10 to 15 years, but not on a social basis. He also said in evidence that Anna ((ie) Ms Marjanovich) had told him, through his wife, that he was dismissed. He said that if his wife had said that they did not want to work in the banks any more that that could have been said in some sort of anger because she was provoked at the time (see pages 26-27 of the transcript at first instance). He denied in evidence that he and his wife had said that they did not want to do the job any more. He said that the "sacking" was for some other reason. It was claimed by Mr Stankovski from the bar table that they had received some cheques after the termination of employment, but he did not understand what these represented.

Mrs Sevda Stankovska gave evidence. She said that Ms Rowe had rung her to say that she was coming in tonight about 4.00 o'clock to take the keys because security was very upset. She did not say when this was. She said the client rang back about 2.00 pm to say that she wanted the keys. She said that "she" did not explain why she (Mrs Stankovska) and her husband were to finish, but indicated there was a meeting the next day with the bosses saying "I think finish tomorrow because you make wrong with security". They discussed pay, but were not paid. Mrs Stankovska gave evidence that she did not speak to Ms Marjanovich on 28 May 1995 because she was ill. She said that she did not know that Ms Marjanovich was her boss and her manager. The next day, (that is 29 May 1995), Mrs Stankovska said that Ms Marjanovich rang and ordered the keys. Mrs Stankovska felt bad about it, but did not contact anyone. Mrs Stankovska said that Ms Marjanovich said that she came and collected the keys because of security. No complaint was made about the cleaning. However, Mrs Stankovska's evidence was that Ms Marjanovich was coming to collect both keys for the banks. She said that she had known Ms Marjanovich for 10 to 15 years, but not socially. When Ms Marjanovich came to collect the keys she said "The boss is very upset. I have to collect the key". Mrs Stankovska did not ring the office about this, but her husband did, she said. She received no termination pay from the company. No-one asked for that and she has received none to this day.

There was evidence for the respondent from Ms Anna Marjanovich and Ms Dianne Rowe.

At the material time, Ms Anna Marjanovich was a relieving contract manager employed by the respondent. She was relieving for Ms Dianne Long, the contract manager, who was on leave. She said that before Ms Long went on leave she introduced Ms Marjanovich to all of the cleaners and told them that Ms Marjanovich would be in charge while Ms Long was away. This included Mr Stankovski and Mrs Stankovska. Ms Marjanovich said she had known Mr Stankovski and Mrs Stankovska for 15 years and that this included a social acquaintanceship. They visited the same club and Mrs Stankovska had been her hairdresser at one time. Mr Stankovski and Mrs Stankovska denied in evidence that they knew her socially. Ms Marjanovich said in evidence that, on 28 May 1995, Bankwest in Bassendean telephoned her about some dead cockroaches on the stairways and in the kitchen at the branch. She went to the bank at the usual cleaning time and neither Mr or Mrs Stankovski were there. She telephoned them and spoke to Mr Stankovski and he told her that Mrs Stankovska was sick. He told her that he had to bring Mrs Stankovska home. He also told Ms Marjanovich that he would do the cleaning himself. The next day there was the usual operations meeting held on each Thursday at 10.00 am. When Ms Marjanovich came out about 12.00 noon there was a message from the Westpac branch in Bassendean that the bank had not been cleaned the previous night. She then rang the Stankovski's home and spoke to Mrs Stankovska and asked her why the banks had not been cleaned the previous evening. It was then, she said in evidence, that Mrs Stankovska said that she was sick. Ms Marjanovich said that she had told Mrs Stankovska that she was aware of that. Ms Marjanovich said that the previous evening when she spoke to Mr Stankovski he had assured her that he was going to clean the banks. Ms Marjanovich's evidence was then that Mrs Stankovska replied to her as follows—

> "Well, we are fed up with all of this. We are really fed up with everything. If you don't like it, you come and get the keys."

They talked for about half an hour and Mrs Stankovska, amongst other things, complained about Ms Long. Ms Marjanovich confirmed in evidence that what she believed as a result of the conversation was that Mr Stankovski and Mrs Stankovska were fed up and that they did not wish to continue cleaning the banks any more. Further, Ms Marjanovich said that she understood that they did not wish to continue to work for the respondent any more. Ms Marjanovich concluded that she had no choice but to go and get the keys and start another cleaner on the work. Late that afternoon she went around and got the keys from Mrs Stankovska at her front door and started another cleaner the same night. Mrs Stankovska was not reluctant to hand over the keys, on the evidence of Ms Marjanovich. Mrs Stankovska did not say anything which indicated that she may have changed her mind. Neither Mr or Mrs Stankovski contacted her after that day. She was shocked when she found out that Mr Stankovski and Mrs Stankovska were alleging that they were unfairly dismissed. She discovered this, it would seem, only after the applications in this matter were made to the Commission. An amount of monies was paid to them (see exhibit R1). Ms Marjanovich said that Mr Stankovski and Mrs Stankovska were not dismissed but had dismissed themselves. She remained firm in her evidence that Mrs Stankovska said that they were fed up and did not want to do the work any more, when she was questioned by the Commission. The statement was not made in any sort of heated way, she said. She also said that, when she was assistant to Ms Long, she had had contact with Mr Stankovski and Mrs Stankovska. In cross-examination she said that she did not enter the house and did not force Mrs Stankovska to hand over the keys which Mrs Stankovska handed to her at the front door. She denied sacking or dismissing the appellants and repeated that they had dismissed themselves. She placed the incident relating to security four or five weeks before the termination of the contract. This incident she described as happening when Mr Stankovski and Mrs Stankovska turned the key at the bank too far and it set the alarm off. Security called Mr Stankovski into the bank and asked him to turn the key back because it had been turned too far. Ms Marjanovich then gave hearsay evidence that the security persons had said that Mr Stankovski was abusive and would not tell him that he was a cleaner. They then sent a policeman around and it was alleged that he would not tell the policeman who he was and the security company called the bank's manager in Sydney who then contacted the respondent's office. Ms Marjanovich reiterated that this was five weeks before the termination of their employment. Indeed, Ms Marjanovich said in evidence that the appellants were not bad cleaners and that they were in fact "top cleaners". She denied that Mrs Stankovska sought to keep one key for one bank, and repeated that Mrs Stankovska handed over both keys, one for each bank. She said that the whole matter had nothing to do with security. Indeed, she said in evidence that she would have preferred that the appellants to continue in the work.

Ms Dianne Rowe, a member of the respondent's managerial staff, gave evidence that she was telephoned by Mr Stankovski a few days before she was served with the appellants' applications. She said that he was unhappy with Ms Marjanovich and asked Ms Rowe to investigate. She told him that he could come and see her. However, Mr Stankovski told her very clearly and bluntly that he did not wish to do so. He also told her that what he wanted was payment of monies to him. Ms Rowe went to Mr Tony Petric, the respondent's manager in payroll, and asked him if he was aware of any monies outstanding to Mr Stankovski. She asked him to expedite the payment of any "termination pay". She recalled Mr Stankovski as having been aggressive in this conversation.

CONCLUSIONS

The appellants claimed at first instance that they were unfairly dismissed, and that they should be paid some contractual benefits.

The ultimate decisions which were required to be made were discretionary decisions as these are defined in Norbis v Norbis 65 ALR 12 (HC). Accordingly, whether the Commission at first instance erred and whether the Full Bench should substitute its decision for that of the Commission at first instance were matters to be decided in accordance with the principles laid down in House v The King [1936] 55 CLR 499 at 505 (HC) (see, too, Gromark Packaging v FMWU 73 WAIG 220 (IAC)). The Full Bench cannot substitute its decision for that of the Commission at first instance unless the appellants establish that the exercise of that discretion miscarried and that the Commission at first instance therefore erred as House v The King (op cit) (HC) prescribes.

There was, however, a matter raised on appeal which it is necessary to decide, which is not a matter of the exercise of discretion. That is the complaint that the appellants were denied natural justice in that they were not given a fair and sufficient opportunity to present their cases.

There was also a complaint in relation to the Commission's decision that there was no jurisdiction to order payment of certain contractual benefits claimed because these were payable under the award, and that this should have been raised by the Commission earlier than at the conclusion of proceedings.

WAS THERE A DISMISSAL OR DID THE APPELLANTS RESIGN?

The crucial question to be decided by the Commission in this case was whether the appellants were dismissed or whether they themselves had terminated their contracts of employment or purported to do so. If they were not dismissed then there was no jurisdiction in the Commission to make any orders for compensation or any order which required as a condition precedent that a finding of unfair dismissal be made.

There was a conflict of evidence between Mrs Stankovska and Ms Marjanovich at the heart of the matter. For that matter there was some conflict of evidence between Mr Stankovski and Ms Marjanovich, too.

Mrs Stankovska said that on 29 May 1995 (as we understand her evidence) Ms Marjanovich, the acting contract supervisor, came and took the keys and that they were therefore unable to work any more. What this, of course, indicated was that the contracts of the appellants had been terminated by the act of the respondent. Both denied that they had resigned, their evidence being that they could not work once they were deprived of the keys which enabled them to enter the banks to clean them.

Ms Marjanovich, however, in evidence, was certain that Mrs

Stankovska had said that she was fed up and that she had not been dismissed but had "dismissed" herself. The same observations applied to Mr Stankovski. Ms Marjanovich's clear evidence, too, was that Mrs Stankovska had quite voluntarily handed over the keys to her.

Mr Stankovski said that if his wife had said that she was fed up and had resigned then she did so under provocation. Ms Marjanovich said that Mrs Stankovska was not angry. Mrs Stankovska did not say that she was provoked in evidence. Ms Marjanovich, in any event, gave evidence that the appellants were top cleaners and that she had not wished them to leave.

There was evidence on the part of both of the appellants that they had not followed the matter up with Ms Marjanovich's superiors, except when Mr Stankovski rang Ms Rowe shortly before the applications herein were served. This service occurred on 13 June 1995, less than two weeks approximately after the dismissals alleged in the application to have occurred on 30 May 1995.

There was also evidence by Ms Marjanovich in cross-examination that the problem with security, which arose concerning the appellants, arose four or five weeks before these events and had nothing to do with the cessation of employment of the appellants.

The Commission at first instance found that Mr Stankovski's failure to carry out the cleaning duties which he undertook to do on the evening of 29 May 1995 was not an issue that influenced the company ((ie) the respondent) in the way in which it dealt with this matter.

In the end, the Commission weighed the only evidence as to whether the appellants, through the agency of Mrs Stankovska, had resigned on 30 May 1995 (the date referred to by the Commission) or had been dismissed. The Commission weighed the evidence of Ms Marjanovich against that of Mrs Stankovska. The Commission found that the recollection of Ms Marjanovich was clear and when asked to repeat her recollection it was stated with clarity and precision. The Commission, however, found that the evidence of Mrs Stankovska in relation to the conversation came across as incomplete and appeared to confuse matters such as the security matter which was not relevant.

The Commission also found, as was the case, that there was no evidence of Mrs Stankovska having had second thoughts at the time the keys were handed over. To that matter, of course, there was no evidence that Mr Stankovski had any second thoughts.

This is a matter where the Commission, having observed the witnesses in the witness box, and having considered their evidence, preferred that of Ms Marjanovich to that of Mrs Stankovska. The Full Bench on appeal may not interfere with findings based upon that preference unless such findings result from a misconception of what the evidence was, or the Commission at first instance has misused the advantage it enjoyed as a result of seeing and hearing the witnesses give evidence (see Gromark Packaging v FMWU (op cit) (IAC) and the cases cited therein and also Jones v Hyde 85 ALR 23 (HC) and the cases cited therein).

We have perused the transcript carefully. The reasons of the Commission at first instance as to why it preferred the evidence of Ms Marjanovich are borne out by the evidence, as we have outlined it above. There was significant evidence such as the failure of the appellants to follow up the termination of the contract, (an event about which they now say they were aggrieved), or to adequately explain why they did not follow it up. There was no discernible misuse of the Commission's advantage in seeing the witnesses.

Our summary of the evidence above shows why it can be found that the Commission's advantage was not misused. It was open to the Commission to accept the evidence of Ms Marjanovich in preference to that of Mrs Stankovska. Once the Commission had not accepted the evidence of Mrs Stankovska, and, further, once it had accepted the evidence of Ms Marjanovich, it was entirely open to the Commission to find that Mrs Stankovska, and, indeed, Mr Stankovski through her, had resigned their positions as cleaners employed by the respondent on 30 May 1995. That was because the Commission then accepted that Mrs Stankovska had said on behalf of her husband and herself that they were fed up and wished to work no more for the respondents. In addition, she willingly handed over the keys to the respondent employer's contract manager. The contract was terminated by the action of the appellants, accepted by the respondent. That notice of resignation was not withdrawn or sought to be withdrawn. The Commission was then entitled to find that there was no dismissal and that therefore there was no ability for the applicants to proceed under s.29(1)(b)(i) of the Act. It follows that the Commission was entitled to find that the "security matter" which had occurred five weeks before was irrelevant, and that the failure to carry out cleaning duties on 29 May 1995 was not a matter of consequence in the events which occurred. It follows, too, that the complaint that Mrs Stankovska was dismissed whilst on sick leave is not and cannot be relevant because of the Commission's finding, properly made, that Mrs Stankovska and Mr Stankovski were not dismissed but had resigned. Further, there was no evidence of any attempt, even if such resignations were given in heat, of their withdrawal, even were evidence of anger and provocation accepted, which it was not.

We would add that there was some evidence that the resignation occurred on 29 May 1995 not 30 May 1995, but, in the end, since the day on which this occurred and the day on which the keys were handed over was clearly identified, that evidence does not affect the correctness of the finding and the order made.

DENIAL OF NATURAL JUSTICE

It was part of the appellants' case that they had been denied natural justice, in that they had not been given a reasonable opportunity to present their cases. It is the duty of the Commission to afford parties and persons enabled to participate in proceedings in the Commission natural justice (see Dianella Hotel and Others v FCU 69 WAIG 2303 (FB), RRIA v AMWSU and Others 66 WAIG 1553 at 1559 (IAC) and RRIA v AMWSU and Others 73 WAIG 1993 (IAC)).

Upon a reading of the transcript, it is quite clear that the appellants (and the respondent) were given more than a reasonable opportunity to present their cases, given that natural justice (or procedural fairness) does not impose on the Commission the duty to ensure that the parties take advantage of that opportunity (see Re Media, Entertainment and Arts Alliance; Ex parte Hoyts Corporation Pty Ltd 119 ALR 206 (HC) and Sullivan v Department of Transport 20 ALR 323 at 343 (FC FC) per Deane J). In this case, the Commission gave all of the parties, including the appellants, substantial and certainly reasonable opportunity to present their cases. This was achieved by the parties having the opportunity to make and making opening statements, by their being able to call evidence on oath and by calling witnesses to give evidence on oath, by affording the opportunity to cross-examine and by cross-examination in fact occurring, by affording the opportunity to make submissions during the proceedings and to make closing addresses, and even by the Commission permitting some degree of interruption.

We are satisfied that, even having particular regard to the fact that the appellants were before the Commission at first instance in person, and having regard to their lack of fluency in the English language, the transcript reveals that every reasonable opportunity was afforded them to present their cases. We are therefore not satisfied that there was any denial of natural justice. We hold that there was no such denial.

CONTRACTUAL BENEFITS AND S.29(1)(B)(II) OF THE ACT

S.29(1)(b)(ii) of the Act enables an employee to make a claim 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".

The Commission found correctly that the monetary amounts claimed, which were not by way of compensation, were benefits payable under the award. It was not in dispute, as we understood both the proceedings at first instance and the submissions made to the Full Bench upon appeal, that this was the case. Accordingly, the Commission rightly found that it could make no orders for the payments of amounts for leave, etc. The complaint, as we understood it, however, was that this matter should have been canvassed or decided earlier than the conclusion of proceedings. In our opinion, it could not

have been properly canvassed earlier or decided. The proceedings revealed that these benefits were made due and payable under an award, if they were due and payable at all. They could not be claimed therefore in s.29 proceedings. The Commission waited until the end of the proceedings to determine the matter. Even if there was a denial of natural justice, which there was not, then within Stead v State Government Insurance Commission [1986] 161 CLR 141 (HC) there was no possibility of a successful outcome to the appellants in relation to this part of the matter. If the appellants maintain that there were amounts due and payable under the award, then they may take proceedings in the Industrial Magistrate's Court.

In any event, there was something of a paucity of evidence as to what the amounts claimed were, in fact, and what they represented.

As to that portion of the grounds of appeal which refers to a Ms Martina Martin instructing the appellants to clean the front of the Bankwest Bassendean branch, there was no sufficient evidence at first instance upon which a finding could be made that this had occurred and that the amount payable had not been paid or what the amount was.

We have considered the whole of the evidence, all of the submissions and all of the material before the Full Bench.

For those reasons, we find that no ground of appeal has been made out. We would dismiss the appeals, the exercise of discretion not having miscarried (see House v The King (op cit) (HC)), and no other error of law or fact having been made out which would warrant the appeals being upheld.

GEORGE C: I have had the opportunity of reading the reasons for decision of His Honour the President in draft form. I agree with his findings and conclusion that the appeals should be dismissed and have nothing to add.

THE PRESIDENT: For those reasons, the appeals are dismissed.

Order accordingly

Appearances: Mr T Stankovski on his own behalf, as appellant, and as agent for Mrs S Stankovska, as appellant.

Mr A J Smetana on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tomislav Stankovski and Sevda Stankovska

(Appellants)

and

Quirk Corporate Cleaning Australia

(Respondent).

Nos 117 and 132 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY
SENIOR COMMISSIONER G G HALLIWELL
COMMISSIONER R N GEORGE.

10 May 1996.

Order.

These matters having come on for hearing before the Full Bench on the 26th day of April 1996, and having heard Mr T Stankovski on his own behalf, as appellant, and as agent for Mrs S Stankovska, as appellant, and Mr A J Smetana on behalf of the respondent, and the Full Bench having reserved its decision on these matters, and reasons for decision being delivered on the 10th day of May 1996 wherein it was found that the appeals should be dismissed, it is this day, the 10th day of May 1996, ordered that appeals No 117 and 132 of 1996 be and are hereby dismissed.

By the Full Bench

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

FULL BENCH—
Unions—Application for Orders under Section 72A—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER R N GEORGE.

28 April 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 27th day of April 1995, and having heard Mr C Panizza and with him Mr M Bennett (of Counsel) by leave on behalf of the applicant, and the Full Bench having noted the appearance of Mr P Harris (of Counsel) for the Civil Service Association of Western Australia (Incorporated), and the Full Bench having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of these matters, it is this day, the 28th day of April 1995, ordered and directed as follows—

(1) THAT the hearing dates for these applications, namely the 27th and 28th days of April 1995, be and are hereby vacated.

(2) THAT the Registrar publish each application herein in its entirety in the 24th of May 1995 publication of the Western Australian Industrial Gazette in accordance with s.72A(3) of the Industrial Relations Act 1979 (as amended).

(3) THAT the applications herein be and are hereby listed for hearing and determination for 10 days at 10.30 am on the 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th and 14th days of July 1995.

(4) THAT the said hearing dates of these applications be published in the 24th of May 1995 publication of the Western Australian Industrial Gazette.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

30 June 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 29th and 30th days of June 1995, and having heard Mr R Castiglione (of Counsel), by leave, on behalf of the applicant, Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hos-

pitals" filed herein on the 29th day of June 1995, Ms S Jackson on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch, Mr P Jennings on behalf of The Western Australian Branch of the Australian Medical Association Incorporated and Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated), and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 30th day of June 1995, ordered, declared and directed as follows—

(1) THAT leave be and is hereby granted to the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995 to file and serve an application to be heard pursuant to s.72A(5) of the Industrial Relations Act 1979 (as amended) ("the Act"), provided that an application to be so heard is filed and served before 9.00 am on the 30th day of June 1995.

(2) THAT time be and is hereby extended to The Western Australian Branch of the Australian Medical Association Incorporated in which to file and serve its application to be heard pursuant to s.72A(5) of the Act to and including the 27th day of June 1995.

(3) THAT the Full Bench is satisfied that the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch, The Western Australian Branch of the Australian Medical Association Incorporated and The Civil Service Association of Western Australia (Incorporated) have sufficient interest to be heard pursuant to s.72A(5) of the Act and that the provisions of s.27(1) of the Act, with the exception of s.27(1)(k), shall apply.

(4) THAT the application herein by The Civil Service Association of Western Australia (Incorporated) for leave to intervene pursuant to s.27(1)(k) of the Act 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.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

3 October 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 11th, 12th, 13th, 14th, 15th, 18th, 19th, 20th, 21st and 22nd days of September 1995, and having heard Mr A Drake-Brockman (of Counsel), by leave, and with him Mr R Castiglione (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995, and Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated), it is this day, the 3rd day of October 1995, ordered that the applications herein be and are hereby adjourned to 9.00 am on Thursday, the 16th day of November 1995, Friday, the 17th day of November 1995, Thursday, the 30th day of November 1995 and Friday, the 1st day of December 1995.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

5 December 1995.

Order.

THESE matters having come on for hearing before the Full Bench on the 16th, 17th and 30th days of November 1995 and the 1st day of December 1995, and having heard Mr A Drake-Brockman (of Counsel), by leave, and with him Mr R Castiglione (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995, and Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated), it is this day, the 5th day of December 1995, ordered and directed as follows—

(1) THAT the applications herein be and are hereby adjourned to 4.15 pm on Thursday, the 7th day of December 1995 and Monday, the 11th day of December 1995 for hearing and determination.

(2) THAT the Full Bench does hereby refrain from hearing the following applications by the Hospital Salaried Officers Association of Western Australia (Union of Workers), application Nos 176 of 1995, 198 of 1995, 324 of 1995, 325 of 1995, 327 of 1995 and 328 of 1995, such applications having been withdrawn by leave of the Full Bench and without objection.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

2 April 1996.

Reasons for Decision.

THE PRESIDENT: The Hospital Salaried Officers Association of Western Australia (Union of Workers) (hereinafter referred to as "the HSOA") is and was, at all material times, an organisation as that is defined in the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The HSOA made a large number of applications to the Full Bench of the Commission pursuant to s.72A of the Act. These were dated 3 March 1995 and 7 March 1995 and were published in the Western Australian Industrial Gazette (75 WAIG 1077) dated 24 May 1995. These applications were all couched in terms of Schedule A—

"APPLICATION PURSUANT TO SECTION 72A

Application is made by the Hospital Salaried Officers' Association of Western Australia (Union of Workers) ('the HSOA') for the following orders under Section 72A of the Industrial Relations Act, 1979 ('the Act'):

1. That the HSOA shall have the right to represent under the Act, to the exclusion of the Civil Service Association of Western Australia (Incorporated) ('the CSA'), the industrial interests of all employees employed in the Armadale/Kelmscott Health Service in the particular classes or groups of employees listed in Schedule B to this application and who are eligible for membership of the HSOA.
2. To the extent that the HSOA does not have the right to represent under the Act the industrial interests of any particular class or group of employees listed in Schedule B to this application employed in the Armadale/Kelmscott Health Service the HSOA shall have that right.
3. That the CSA does not have the right to represent under the Act the industrial interests of any employees employed in the in the (sic) Armadale/Kelmscott Health Service particular classes or groups of employees listed in Schedule B to this application who may otherwise be eligible for membership of the CSA."

Schedule B, in each case, sets out the classifications of professional, administrative, clerical, technical and supervisory employees (hereinafter referred to as "PACTS" employees) sought to be covered by the orders sought.

The grounds on which the applications were made were set out in Schedule C and are as follows—

"The grounds on which the applications are made are:

1. The orders sought are ones which it is open to the Full Bench to make under Section 72A of the Act.
2. The orders sought are consistent with the objects of the Act.
3. The orders sought, if granted, will further the objects of the Act.
4. The orders sought are consistent with the objectives of the Western Australian Industrial Relations Commission's ("the Commission") wage fixing principles.
5. The applicant has the right to represent the majority of Professional, Administrative, Clerical, Technical & Supervisory (PACTS) employees employed by Health Service Providers in Western Australia and has exclusive coverage of such employees (excluding Nurses, Medical Practitioners and Leading Hands) in Hospitals.
6. Union rationalisation will aid ongoing reform in the health industry.
7. Union rationalisation in the health industry is vital for the continued economic development of Western Australia. It is therefore in the public interest that the orders be made.
8. The applicant is best placed to represent the industrial interests of the employees referred to in Schedules A & B because:
   (a) In the context of the Western Australian health industry, the applicant is the recognised principal Union in relation to PACTS employees and can commit greater resources and overall industry experience to protect the industrial interests of those employees engaged in the health industry;
   (b) The applicant and its federally registered counterpart, the Health Services Union of Australia, is the Union designated by the Australian Council of Trade Unions for the coverage of PACTS employees in the Health Industry in Western Australia;
   (c) Implementation of further structural efficiency and enterprise bargaining initiatives will be assisted with only one Union representing the interests of PACTS employees; and
   (d) The applicant will be better placed to promote and facilitate successful enterprise bargaining in relation to PACTS employees within the health industry in Western Australia.
9. The orders sought will best facilitate the industrial representation of the employees of Health Service Providers in the Public Sector of Western Australia.
10. The orders sought reflect the structure of the Health Department of Western Australia and of the functions thereof.
11. The orders sought, when applied together with appropriately structured awards and agreements, will better facilitate the industrial representation of the employees sought to be covered, and the industrial management of such employees.
12. The orders sought will reduce the number of awards applying to employees of Health Service Providers in this state.
13. The majority of PACTS employees employed by the providers of Health Services prefer to be covered by the applicant.
14. Any other grounds that may be put to the Commission by the applicant at the hearing of this matter.
15. Any other grounds that the Commission deems just."

(Ground 7 of the applications was not pressed).

In each case, the Board of Management of a District Hospital was specified as being the enterprise in relation to which the applications were brought and was named as the enterprise in which employees were employed, as can be seen from the text of the applications which I have set out above.

There were applications, too, in relation to dental services (applications Nos 176 and 327 of 1995), psychiatric services (applications Nos 198 and 324 of 1995), public health services (application No 325 of 1995), and public and mental health services (application No 328 of 1995), which were withdrawn by leave during the course of the proceedings. A number of enterprises for which applications had been made were notified as having been re-named. These were the Upper-North Metropolitan Health Service, re-named the Wanneroo Health Service (application No 205 of 1995), the Western Wheatbelt Health Service, re-named the Western Health Service (application No 210 of 1995), and Inner City Health Service, re-named the Royal Perth Hospital, Royal Perth Rehabilitation Hospital and Inner City Health Service (application No 187 of 1995). There were a number of enterprises in respect of which no application was made. In some instances, a hospital board was changed in name to a health service, and these are referred to in applications Nos 171, 190, 177, 185, 178 and 199 of 1995.

There are four separate groups of enterprises referred to in the HSOA applications—

(1) Public hospitals.

(2) Regional health services.

(3) State health services.

(4) The Western Australian Centre for Pathology and Medical Research (hereinafter referred to as "the PATHCENTRE").

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED) APPLICATION

The Civil Service Association of Western Australia (Incorporated) (hereinafter referred to as "the CSA") is and was, at all material times, an organisation as that is defined in the Act. It has filed one application, No 496 of 1995, which was filed on 3 May 1995, which was gazetted in the Western Australian Industrial Gazette on 24 May 1995 (75 WAIG 1073), and which, omitting the formal part of the application, reads as follows—

"SCHEDULE "A"

ORDERS

1. The Civil Service Association of Western Australia (Incorporated) ("CSA") seeks an order that it has the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical and supervisory employees) employed by the Honourable the Minister for Health in the business, alternatively the activity of, the provision of hospital and health services (or either of them, or any part of them) including the businesses, alternatively activities described in Schedule "D" hereof, and who are eligible for membership of the CSA to the exclusion of the Hospital Salaried Officers Association of Western Australia (Incorporated) ("HSOA") and any other organisation of employees registered under the Industrial Relations Act save for persons eligible for membership of the Australian Medical Association.
2. The Civil Service Association of Western Australia (Incorporated) ("CSA") seeks an order that it has the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by the Commissioner of Health in the business, alternatively the activity of, the provision of hospital and health services (or either of them, or any part of them) including the businesses, alternatively activities described in Schedule "D" hereof, and who are eligible for membership of the CSA to the exclusion of the Hospital Salaried Officers Association of Western Australia (Incorporated) ("HSOA") and any other organisation of employees registered under the Industrial Relations Act save for persons eligible for membership of the Australian Medical Association.
3. The CSA seeks orders that it has the right to represent the industrial interests of all salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by each of the enterprises, businesses or activities listed in Schedule "C" hereto or any successor to any such entity in the provision of hospital and health services (or either of them, or any part of them) to the exclusion of the HSOA and any other organisation of employees registered under the Industrial Relations Act save for the Australian Medical Association."

The grounds on which the application was made are set out in Schedule B and are as follows—

"GROUNDS FOR APPLICATION

1. The Full Bench has jurisdiction pursuant to Section 72A of the Industrial Relations Act 1979 to grant the orders sought.
2. The Civil Service Association of Western Australia (Inc) (hereinafter "CSA") has historically had coverage for individuals employed in the Health Department by the Honourable Minister for Health and the Commissioner for Health, employed to administer the State's public health system.
3. The CSA has had and continues to have significant actual membership from this coverage totalling approximately 1520 current members.
4. The Hospital Salaried Officers Association of Western Australia (hereinafter "HSOA") currently has coverage of salaried employees of hospital boards employed to perform hospital/health services.
5. Circumstances in relation to the enterprises the subject of this application have and will continue to alter due to the Government's introduction of a regional health model and the concept of funder, purchaser and provider in the administration of public health in this State. As a consequence of such changes a significant number of positions (and potentially covered employees) historically in the Health Department of Western Australia, presently under CSA coverage will become employees of Hospital and Health Services Boards or agencies established under the Hospitals Act 1927 as amended. Such employees coverage will become subject to demarcation with the HSOA.
6. Notwithstanding the changes referred to in 5. above, the duties and nature of the work completed by the employees whose employment will be transferred from the Health Department to hospital boards will remain substantially the same. The only principal changes that will occur in relation to such positions are the change of designated employer and work place.
7. The members and potential members of the CSA effected and referred to in paragraph 2, 3 and 5 above, favour continuation of CSA coverage of their positions.
8. The CSA has over its historic coverage of such employees facilitated such enterprises high degree of industrial harmony, efficiency and productivity.
9. In the premises it is fitting and just that the CSA retain coverage of the persons completing the duties historically performed by Health Department employees employed by the Honourable Minister for Health and Commissioner for Health.
10. Failure to grant the CSA's sought orders 3 and 4 would result in a difficult demarcation in the public health sector. This dispute will be potentially exacerbated in the future with the creation of new employment positions and evolution of employment positions in the sector. Such disputes will not be conducive to industrial harmony, minimisation of disputes and therefore not in the public interest.
11. The CSA ought to be preferred to the HSOA for such expanded coverage on the basis:
    (a) That the majority of employees affected would prefer such coverage.
    (b) Such coverage for furtherance of State legislation and general principles for the rationali-

sation of industrial representation in enterprises. The orders would create single or limited effective union representation at any given time in the specified enterprises.

(c) The CSA is better placed to deal with the interests of persons providing hospital and health services than the HSOA. The CSA is better equipped to give existing and prospective members the industrial and other services which they require. The CSA has better human, financial and technological resources than the HSOA.

(d) The CSA has structures which permit the participation of its members in the affairs of the organisation.

(e) Industrial protection and services provided by the CSA are superior to those of the HSOA.

(f) Historically the CSA has provided impetus in relation to public health sector employees in matters of award entitlement etc. In contrast the HSOA has simply followed initiatives introduced by the CSA for its membership.

(g) If the Applicant's application is not granted, there will be a reduction in union membership as existing CSA members will not joint (sic) the HSOA.

(h) In the circumstances the CSA will be a more effective and efficient representative of the effected employees interests and concerns.

12. In the circumstances it is fitting and just to allow the CSA coverage of its historically covered positions and to allow the CSA to acquire coverage to the exclusion of the HSOA and others of the enterprises specified in the application."

Schedule C to the application sets out a large number of Boards of Management of various hospitals, both public and private, to designate the enterprises referred to in the application.

Schedule D refers to the psychiatric health services, alternatively the mental health service, the Health Department of Western Australia and/or alternatively the Department of the Public Service of Western Australia, the Public Health Services of Western Australia and/or Community Health Services, the PATHCENTRE and the public and mental health services.

INTERVENTION BY AND WITHDRAWAL OF ORGANISATIONS AND OTHERS PERSONS IN AND FROM THE PROCEEDINGS

All applications were ordered to be heard, together with each applicant organisation being given the right to be heard under s.72A of the Act, the HSOA being given the right to proceed first.

I should say that a number of "parties" sought to appear through counsel and counsel was given leave to appear in each case.

A number of applicants appeared and sought leave to intervene and/or to be heard under s.72A of the Act.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (hereinafter referred to as "the ALHMWU") filed an application seeking to be heard under s.72A(5) of the Act, and also filed a notice seeking to be given leave to intervene under s.27(1)(k) of the Act. The two are separate sections and require separate applications.

The Minister for Health, the Commissioner of Health, the Boards of Management of Public Hospitals and the PATHCENTRE sought leave to be heard under s.72A(5) of the Act. Mr John Serich appeared as agent for them.

The Western Australian Branch of the Australian Medical Association Inc (hereinafter referred to as "the AMA") sought leave to intervene and to be heard under s.72A in relation to all applications.

Those persons whom Mr Serich represented had failed to comply with the Industrial Relations Commission Regulations 1985 (hereinafter referred to as "the Regulations"), but, after hearing his submissions, the Full Bench gave leave to file and serve the necessary documents out of time, and, in fact, within 24 hours of 29 June 1995. Exhibit 3 contains the list of persons whom Mr Serich represented.

The Full Bench, having heard argument, decided that the Minister for Health and the other persons whom Mr Serich represented had sufficient interest to be heard under s.72A(5) and were heard. The same was decided in relation to the ALHMWU, the AMA and the CSA. This was all in relation to the HSOA's applications (see page 57 of the transcript). In relation to the CSA application, the HSOA, the AMA and those persons represented by Mr Serich had sufficient interest to be heard and were heard. The interest which these persons had as employers, prospective employers and organisations who had coverage in the hospital and/or health industries was obvious. Whether there was an interest was measurable according to the prescription in R v Ludeke and Others; ex parte Customs Officers' Association of Australia, Fourth Division [1985] 155 CLR 513 (HC).

The CSA's application for leave to intervene was dismissed, as was the HSOA's application. Indeed, no organisation or other person, natural or otherwise, was given leave to intervene.

I turn briefly to the reasons why persons seeking leave to intervene were refused that leave where they were given the right to be heard under s.72A. The Full Bench considered a similar question in relation s.27(1)(k) and s.55(2) of the Act in Re an application by the FMWU 73 WAIG 563 (FB). There were some obiter dicta upon the question by Ipp J in Re Sharkey and Others; ex parte Burswood Resort (Management) Ltd and FLAIEU (No 2267 of 1993) (unreported), judgment delivered 2 February 1994 (SC of WA).

S.72A(5) of the Act provides as follows—

"(5) The Full Bench shall not make any order described in subsection (2) without giving persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity of being heard."

However, what is significant is s.27(1)(k) of the Act which provides as follows—

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

...

(k) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Commission has a sufficient interest in the matter;"

What the Act provides, therefore, is a general power in the Commission to permit intervention in any matter before it where the applicant for leave to intervene establishes a sufficient interest in the matter (see Gairns and Dempsey v RANF 69 WAIG 2343 and R v Ludeke and Others; ex parte Customs Officers' Association of Australia, Fourth Division (op cit) (HC) at pages 519-521 per Gibbs CJ and at page 527 per Mason J).

In Re an application by the FMWU (op cit) (FB), the Full Bench considered s.27(1)(k) and s.55(2)(c) of the Act. S.55(2)(c) reads as follows—

"(2) When the organization has complied with the requirements of subsection (1) the Registrar shall publish in the Industrial Gazette—

...

(c) notice that any person who objects to the registration of the organization and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Full Bench that he has a sufficient interest in the matter, may appear and be heard in objection to the application."

It enables a person to appear and be heard in objection to an application to register an organisation or to alter the rules of an organisation.

The Full Bench refused to give leave to a person to intervene and to object at the same time. The Full Bench so refused because—

(1) There is an adequate provision in the Act, s.55(2)(c), which enables a person with sufficient interest to participate in s.54 and s.55 proceedings as an objec-

tor.

(2) A person is given leave under the Act to intervene only if that person cannot otherwise under the Act participate in proceedings in the Commission.

(3) The general power to permit intervention under s.27(1)(k) of the Act could not be exercised to do that which is already conferred upon the Commission by a special power (see Anthony Hordern and Sons Ltd and Others v Amalgamated Clothing and Allied Trades Union of Australia [1932] 47 CLR 1 at 7 (HC) and Leon Fink Holdings Pty Ltd and Another v Australian Film Commission 24 ALR 513 (HC)).

(4) A person who is not an applicant cannot otherwise participate in s.54 and s.55 applications in the Commission, and there are no respondents to applications to register an organisation or to alter its rules.

In Re WAIRC; ex parte Robe River Mining Co Pty Ltd (1992) 9 WAR 121 (SC of WA), the question of rights to intervene or object in s.72 amalgamation applications arose, but that case was distinguishable from this because s.72 of the Act prescribed no separate right to be heard and s.72A of the Act does.

In Re Sharkey and Others; ex parte Burswood Resort (Management) Ltd and FLAIEU (No 2267 of 1993) (unreported) (op cit) (SC of WA) per Ipp J, the question of the effect of s.27(1)(k) and s.55(2)(c) of the Act was considered, but only very much in obiter by His Honour. The Full Bench had refused Burswood Resort (Management) Ltd, an employer of persons, leave to intervene in an application by the Federated Miscellaneous Workers' Union of Australia, Western Australian Branch, to alter its rules. However, the Full Bench did find that Burswood Resort (Management) Ltd was entitled to object, and for that reason refused leave to intervene. His Honour doubted that approach. He took some account of a person aggrieved by a decision of the Full Bench not being able to appeal from a decision under s.90 of the Act, because, whilst an intervener can appeal, an objector cannot (see s.90(2) of the Act). His Honour suggested that there is a reasonable argument that there is no reason in principle why a person who is entitled to be heard as an objector under s.55(2) of the Act should not be given leave to intervene under s.27(1)(k) of the Act. Indeed, His Honour suggested that there was good reason in principle to allow such a person to intervene so as to afford that person the right of appeal under s.90(2). His Honour, as I understand what he said (at pages 19-20), also saw an argument for allowing objectors to deal with a step in proceedings and interveners to intervene to support or oppose the very claim. In other words, His Honour saw an argument that there was a gradation of interest with the objectors lower down and the interveners higher up on the scale of interest. Since what His Honour said was obiter, I would, respectfully, not regard myself as bound by his remarks.

S.72A of the Act is a section which was inserted in the Act in 1993, long after s.27(1)(k) of the Act was. It is a special and particular section dealing with applications by organisations for exclusive coverage of a particular class or group of employees employed in an enterprise (to put the provision in general terms).

S.27(1)(k) of the Act is a general provision which covers all proceedings before the Commission generally, except when it is otherwise provided in the Act. I say that because the Commission's powers are limited by that part of s.27(1) which prefaces the section with the words "except as otherwise provided in this Act ...". That means that if the Act provides otherwise than s.27(1)(k) provides, then the Commission does not have the powers or any of them otherwise conferred by s.27(1).

S.72A(5) requires the Full Bench not to make an order under s.72A(4) without giving persons who, in the opinion of the Full Bench, have a sufficient interest, an opportunity to be heard. That opportunity might be to be heard in the same manner as a party might, or it might be limited to a brief submission on a comparatively insignificant point. What is sufficient interest can be approached in the manner set out in R v Ludeke and Others; ex parte Customs Officers' Association of Australia, Fourth Division (op cit) (HC).

The same test is applicable therefore under 27(1)(k) and s.72A(5) of the Act. S.27(1)(k) enables a person to intervene subject to any conditions which might be applied by the Full Bench. S.72A enables a person to be heard by the Full Bench. The extent of an intervention can be wide or narrow under s.27(1)(k), because the intervention may be permitted on such terms as the Commission thinks fit. Similarly, the right to be heard under s.72A(5) may be substantial or very limited, as I have illustrated.

However, the point is not whether a person can exercise a right of appeal under s.90 of the Act or whether that person cannot. It is what rights are prescribed by the Act to enable the person to participate in s.72A proceedings.

A right to intervene exists by leave, unless the Act otherwise provides (see s.27(1)(k)). The Act, in s.72A(5), does otherwise provide, and does so plainly and specifically. It envisages a different type of participation from that permitted to an intervener. It prescribes for a right to be heard. The section provides the right to be heard in a particular case as distinct from the general right to be heard as an intervener provided for in s.27(1)(k). If the legislature had intended a person with a right to be heard to have the rights of appeal of an intervener it would have said so in s.90 of the Act, although, as I have already said, that is not the point. Alternatively, there would have been no reference to a person having a right to be heard in s.72A(5) and no need for such a reference, because the power contained in s.27(1)(k) would have been sufficient. If the legislature had intended that a person with a right to be heard be an intervener, there would, in fact, be no need for s.72A(5). The rights of a person under s.72A(5) would have been protected under s.27(1)(k). As it is, a specific separate category of participant in proceedings has been created under s.72A. The Act has provided otherwise than for intervention as the means of such a participation occurring, and because s.72A(5) provides otherwise the Full Bench cannot exercise the power which it otherwise might under s.27(1)(k). That is what s.27(1)(k), read with s.72A, provides.

For those reasons, all of those persons who applied to be heard under s.72A(5) had no right to be given leave to intervene under s.27(1)(k). A reading of those sections, in the context of the whole of the Act, leads to this conclusion, which, for the reasons which I have set out above, does not give rise to ambiguity or absurdity. It will be seen that the reasoning applied in Re an application by the FMWU (op cit) (FB) is applicable to this case, too, albeit that s.55(2) of the Act provides for a right to object and not a right to be heard. In reaching this conclusion, I have considered all of the arguments put to the Full Bench. Those persons who were permitted to be heard were employers or prospective employers or organisations who had or claimed coverage of employees.

On the basis that the CSA and HSOA accepted that the determination of the Full Bench in these proceedings should exclude medical practitioners eligible for membership of the AMA, the AMA, through Mr Jennings, sought and was granted leave to withdraw on that basis (see pages 246-248 of the transcript).

On the strength of undertakings from both applicants, the ALHMWU elected to take no further part in the proceedings (see pages 249-250 of the transcript).

HSOA'S OBJECTION TO ILBERY BARBLETT ACTING AND MR NISBET AND MR HARRIS APPEARING

On 3 July 1995, an application was made by the HSOA that the Full Bench refuse or withdraw leave already given to Mr Nisbet QC and Mr Harris (of Counsel), some time before and without objection, to appear on behalf of the CSA. Mr Le Miere QC appeared by leave with Mr Drake-Brockman (of Counsel) and Mr Castiglione (of Counsel) in relation to this application. The case was that we refuse or withdraw leave to Mr Nisbet and Mr Harris to appear because of a "conflict of interest" on the part of their instructing solicitors and Mr Nisbet. The application was not in any way directed to their instructing solicitors.

It was submitted on behalf of the HSOA that the Commission was required by s.26 of the Act to act in accordance with equity, good conscience and the substantial merits of the case. Further, any court or statutory tribunal, so the submission went, has an implied power to control its own procedure, subject to

the legislation creating and regulating it, in this case, the Act and Regulations (see In the Marriage of A and B (1990) FLC 92-126 per Smithers J and Thevenaz v Thevenaz (1986) FLC 91-748, cited with approval in Mallesons Stephen Jaques v KPMG Peat Marwick (1990) 4 WAR 357 (SC of WA), and see also Carindale Country Club Estate Pty Ltd v Astill and Others (1993) 115 ALR 12). In Mallesons Stephen Jaques v KPMG Peat Marwick (op cit) (SC of WA) and Carindale Country Club Estate Pty Ltd v Astill and Others (op cit) there was an application to the Supreme Court of Western Australia and the Federal Court in each case for an injunction to prevent solicitors continuing to represent parties against parties for whom they had formerly acted. Smithers J and Frederico J In the Marriage of A and B (op cit), however, relied on the power of the Family Court to exercise control over its own procedure.

The submission was, too, that the Commission, in the exercise or control of its own procedure, may determine whether or not it will permit particular counsel or solicitors to represent a party in the proceedings before it.

The second source of power, it was submitted, was s.31 of the Act which confers upon the Commission a discretion whether or not to permit a party to be represented by a legal practitioner.

The submissions went on as follows, and I now paraphrase them. It is within the power of the Commission to determine whether leave is granted to a particular practitioner. Implicit in s.31 is a power to grant leave to particular practitioners, not simply a class of practitioners. The implied power to control its own procedures is fortified by the provisions of s.26 of the Act. The basis on which that power should be exercised is as prescribed in s.26.

S.27(1)(v) of the Act also applies, but it is not as strong as the Commission's power to control its own proceedings, so the submission went. Reliance as to the merits of the application was placed on exhibits 6, 7 and 8, the affidavits of Daniel Patrick Hill and Carolyn Lian Tan sworn on 4 July 1995, and Alphonsus Gerard Barker sworn on 5 July 1995. The affidavits of Charles Timothy Gollow were also filed and relied upon by the CSA (see exhibits 9 and 10).

From 1979 to 1992 Ilbery Barblett and O'Dea, or Ilbery Barblett, acted as solicitors for the HSOA. Mr Nisbet had been a partner in that firm during this time, but had left the firm in 1988. It is not clear when Mr Harris joined the firm or whether he himself has or had any knowledge of the affairs of the HSOA, except that none of the present partners of the firm has acted for the HSOA since 1992. In addition, all of Ilbery Barblett's HSOA files have been destroyed, with the exception of 16 files, and only one relates to the "HSOA re: Constitutional rule/CSA" file. In addition, Ilbery Barblett had acted since 1972 for the CSA, as well as for the HSOA.

Mr Hill's affidavit contained an expression of concern that Ilbery Barblett and Mr Nisbet had gained much privileged and confidential information in acting for the HSOA over the years, including information which might be relevant to the present application. Advice was given during that time as to the eligibility rule of the HSOA which has remained in much the same form since 1966. The main practitioner who acted in industrial matters from 1979 to 1985 in the firm of Ilbery Barblett was Mr Nisbet. There were instructions and advice given about the eligibility rule back in 1974 and 1979. In 1981, the HSOA provided to Mr Nisbet a history of the constitutional and industrial coverage of the HSOA. Ilbery Barblett, over 20 years, had frequent communications with the HSOA. Past matters are relevant and reflect upon present capacities and abilities. The perception of the union is important, so the submission went. Further, the HSOA as a party, was put at a psychological disadvantage. It was also submitted that there was a conflict in the duty to keep confidential what counsel learned in acting for the HSOA and the duty to represent the CSA using all their skills and knowledge. There was no waiver operating against the HSOA's right to object, it was submitted. Challenge was made at the earliest opportunity. There was previously no person who was in possession of any facts which would have justified the application being made at the time.

Mr Nisbet submitted that there was no jurisdiction in the Commission to go into the matter. One cannot turn to s.26(1) or s.27(1) of the Act to find a general power which supplants or in some way deals with the question contrary to s.31(4) of the Act (see Leon Fink Holdings Pty Ltd and Another v Australian Film Commission (op cit) (HC)). The application and the grant were conditioned only by the principle contained in s.31(4) of the Act, namely that a question of law was likely to be raised or argued. S.26 says nothing to the contrary. The appropriate place for questions like this to be determined is in the Supreme Court of Western Australia because s.31 of the Act is not used to deal with practitioners. In the ordinary course of events, questions of authority as between solicitors and client do not arise.

There is no specific power and no general power in the Commission to deal with this question. There is no implied or inherent power either. In dealing with the authorities it must be borne in mind that the Commission is not a superior court of record, but the Family Court is (see s.21 of the Family Law Act 1974 and see Thevenaz v Thevenaz (op cit)).

We were taken to R v Forbes and Another; ex parte Bevan and Others [1972] 127 CLR 1 (HC) as authority for the proposition that courts of unlimited jurisdiction have inherent jurisdiction. The Family Court cases are to be distinguished because the Family Court is a superior court of record, and because the Family Court, under s.114 of the Family Law Act 1974, has the jurisdiction to grant injunctions. There is also a specific order of the Family Court, order 37(2), forbidding a practitioner from representing or acting for at any time parties having an adverse interest in the proceedings. There was no argument as to power or jurisdiction before the Family Court in those cases.

The Supreme Court has an inherent jurisdiction in disciplinary matters over its officers, based on its absolute right to see that a high standard of conduct is maintained by them. The Commission, it was submitted, has not.

Further, all of the authorities, except the Family Court cases cited to us, related to separate proceedings taken to restrain solicitors acting, and that was a distinguishing feature from this application where the application was made in the case in which counsel were appearing.

The Commission's jurisdiction is within the confines of the Act and it does not include the relationship between solicitor and client, so it was submitted.

Mr Nisbet and Mr Harris were involved in these matters as and from 27 March 1995, as were Ilbery Barblett. If the information possessed were so sensitive, this would have been manifest from the beginning, not at 3.00 am on the Friday before these matters were raised, so the submission went.

The issues relevant to these proceedings were all on the face of the applications. It was submitted that the eligibility rule stands or falls in its interpretation according to its tenor; subtlety of construction is not relevant. The involvement of senior counsel ceased about eight years ago. The affidavits point to no existing conflict . The last time that Mr Nisbet could conceivably have had knowledge of the financial status of the organisation was in 1988, so the submission went. The burden is on the HSOA to establish otherwise.

There were further submissions. The relevant provision, s.72A of the Act, did not come into operation until 1993 and could not itself have given rise for taking instructions and giving advice. This matter, however, is one of procedural not substantive law. There is an implied power to regulate proceedings (see Grassby v R [1989] 168 CLR 1 (HC)).

It was also submitted as follows. The principle as to special and general powers does not arise in this case. There is no conflict between general and specific provisions. That is because there is no conflict between s.31 of the Act and the implied power of the Commission to not permit a particular practitioner to appear before it. Under s.31, there is always a discretion to permit an appearance. It was the duty of the solicitor to make full disclosure (see Meagher, Gummow and Lehane "Equity—Doctrines and Remedies" 3rd Edition at page 143).

The solicitor/client relationship went back a long way. The issue of the eligibility rule was discussed with Mr Nisbet, on Mr Barker's evidence. The same information is available on the public record. Mr Nisbet, having left the firm of Ilbery Barblett, went to the Bar in 1988. Ilbery Barblett had not acted for the HSOA since 1992. No current partner has acted for the

HSOA. All of the files have been destroyed, except 16.

The first question is to determine whether there is jurisdiction and power in the Commission to decide this application. Of course, the Supreme Court has jurisdiction over all legal practitioners as officers of the Court. Further, in respect to alleged breaches of fiduciary duty, that is not a matter as such which this Commission has the jurisdiction to determine. Thirdly, this Commission does not have inherent power such as a superior court of record has. Further, however, it does have the power to regulate proceedings before it. That is implied (see Grassby v R (op cit) (HC)).

The Commission, however, has undoubted power and the discretion also to determine whether a legal practitioner may appear and be heard in any matter before it. S.31 of the Act provides that. There is nothing in the section or elsewhere in the Act which prevents the Commission revoking such leave as was sought of the Commission that it do here. In any event, s.50(2)(c) of the Interpretation Act 1984 (as amended) would confer power to withdraw leave to appear after it had been given. In making such a decision, the Commission is bound to act according to equity, good conscience and the substantial merits of the case in all the decisions which it is required to make. If in the course of proceedings the Commission for good reason, consistent with s.26 of the Act, is persuaded to revoke such leave, then the Commission acts within power in revoking it under s.31 of the Act.

Next, 27(1)(v) of the Act confers a general power on the Commission to give all directions and do all such things as are necessary and expedient for the expeditious and just hearing and determination of the matter. That general power is not to be read in isolation, but in the context of specific powers which precede it. S.27(1)(v) does not confer substantive jurisdiction, but merely legislates for the way in which the Commission may exercise the jurisdiction already conferred upon it by the Act (see RRIA v FEDFU 67 WAIG 315 (IAC)). However, the provision is one which would give power to the Commission to make such orders involving the representation of the parties as were necessary to be made if s.31 of the Act did not do so already. Certainly, the section would confer powers to revoke a right given to persons to appear if s.31 did not provide for that power. That being so, it is not necessary to go to any implied powers as a basis for making such an order or any implied power which enables the Commission to regulate proceedings before it. The fact that orders made in the authorities cited to us were made in separate proceedings from the proceedings where the solicitors concerned were acting, does not detract from the ability of the Commission to deal with a question such as this when it comes before the Commission in the same proceedings when express powers are conferred upon the Commission so to do.

It is obvious that the Commission is dealing with the application to revoke leave granted to counsel to appear for the applicant CSA in order to properly regulate the proceedings before it, as s.31 enables it to do, and as s.27(1)(v), alternatively, empowers it to do. The Full Bench quite clearly therefore has and had the power to make the order sought.

The next question is whether the order should be made. We were referred to a number of authorities. The main authorities cited were Carindale Country Club Estate Pty Ltd v Astill and Others (op cit) per Drummond J and Mallesons Stephen Jaques v KPMG Peat Marwick (op cit) (SC of WA) per Ipp J where the principles are set out. Although those authorities refer to solicitors and not to counsel, nothing was said which would persuade me that the principles could not apply to counsel as well as solicitors. (This application was noteworthy in that it explicitly excluded any reference to the instructing solicitors). Indeed, there is every reason why those authorities are applicable. The principles, as I extract them, are these—

(1) A solicitor is liable to be restrained from acting for a new client against a former client if a reasonable observer, aware of the relevant facts, would think that there was a real, as opposed to a theoretical possibility, that confidential information given to the solicitor by the former client might be used by the solicitor to advance the interests of a new client to the detriment of a former client.

(2) Both counsel and solicitors in their work have a public element due to their being officers of the court. Their duty of loyalty does not end with the termination of their retainer, and the law favours a strong policy of ensuring that solicitors (and also counsel) do not have actual or apparent conflict of interest in order to maintain public confidence in the administration of justice.

(3) It would be inconsistent for the law to encourage the client to repose confidential information in a solicitor by making those confidences privileged from disclosure without the client's consent if the law, on the other hand, were to readily allow the solicitor to act for a new client in a matter adverse to the interests of the old client.

(4) Further, a solicitor given confidential information would, in general, only be able to avoid being enjoined if it was clear that that confidential information in question relates only to matters which were remote from the matters relevant to the discharge by the solicitor or counsel in this case for their new client of his or her duty.

(5) It is a basic requirement, before material will be recognised as confidential information, that the information in question be identified with precision and not merely in global terms, even though it may necessitate the disclosure to the court of the very information which it was sought to preserve from disclosure.

In this case, on all of the evidence, I am satisfied that there is not a real possibility that confidential information might be used by counsel to advance the interests of the CSA to the detriment of the HSOA. That is because too great a time has elapsed since senior counsel acted, and junior counsel have never acted. Further, and importantly, the information said to give rise to the conflict has not been precisely or adequately identified in these proceedings to enable the applicant to establish its case, in terms of the principles which I have set out above.

Moreover, on the evidence before us, not contradicted, almost all of the HSOA files at Ilbery Barblett have been destroyed, senior counsel has not acted since 1988, which is eight years ago, and junior counsel has never acted for the HSOA.

Next, insofar as any information might relate to the question of constitutional coverage, I was not persuaded that any information conveyed to Mr Nisbet would be capable of being used to the detriment of the HSOA, since the rules of each organisation have primarily to be interpreted in accordance with the ordinary rules of construction (see R v Aird; ex parte AWU [1973] 129 CLR 654 (HC)). It is therefore difficult to see what confidential information could strongly affect this exercise, and, indeed, what confidential information existed. In any event, it was not established to me that the information about the rules and their alteration, which are a matter of public record, could, in any way, be augmented by any confidential information given to the solicitors involved.

As to membership and financial information, there was no evidence of any relevant or more apposite information than might be available in the form of public records which would be available to counsel involved or any other member of the public.

I would also add that, given the history of the HSOA as a longstanding client of Ilbery Barblett, I would have expected that this matter, were it problematical, would have been raised by counsel and instructing solicitors long before this were it objectively to be viewed as detrimental to the HSOA.

Next, the order, a somewhat restricted one, was sought against counsel, not the solicitors who would have this information. I am not persuaded that such detriment would be caused to the HSOA, on the principles which I have set out above, by the continuing appearance in this application of Mr Nisbet and of Mr Harris so as to justify the Full Bench granting the HSOA application. We did not revoke leave to Mr Nisbet and Mr Harris to appear.

WITHDRAWALS

The applications of the HSOA no longer seek to cover employees in the Health Department of Western Australia proper, in dental services, psychiatric services or in the public health service. However, it may seek to do so in the future if the employer changes, as I understand the HSOA position. The relevant applications were withdrawn by leave on the HSOA's application in those terms. Those applications are numbered as follows— No 176 of 1995, No 198 of 1995, No 324 of 1995, No 325 of 1995, No 327 of 1995 and No 328 of 1995.

BACKGROUND

These are applications brought by two organisations, as that word is defined in s.7 of the Act, pursuant to s.72A of the Act.

The HSOA seeks orders pursuant to s.72A of the Act granting it the right to represent, to the exclusion of the CSA, the industrial interests of all PACTS employees of those enterprises listed in application Nos 168-210, 214-267 and 278-329 of 1995. Those enterprises are named as various health services and an agency created under the Hospitals and Health Services Act 1927 (as amended) (hereinafter referred to as "the Hospitals and Health Services Act"), namely the PATHCENTRE, properly called "The Western Australian Centre for Pathology and Medical Research".

The HSOA applications, however, are brought under s.72A(2)(a) of the Act on the basis that the HSOA already has coverage of all of the employees sought to be covered by the applications.

In the alternative, the HSOA has brought applications seeking exclusive coverage of the same group of employees. These applications are brought to determine the right to represent PACTS employees in what is termed the public hospital and health services industry against the background of proposed restructuring in the industry.

By its application, the CSA seeks orders that it has the right to represent the industrial interests of salaried employees, including PACTS employees, employed by the Minister for Health in the business or activity or the provision of hospital and health services, to the exclusion of the HSOA and all other organisations, except the AMA. The CSA seeks a similar order in respect of persons employed by the Commissioner of Health. The same order is sought in relation to the same employees employed by each of the enterprises, businesses or activities listed in Schedule C to the application or any successor thereto and the provision of hospital or health services. The CSA seeks orders, too, in relation to a number of private hospitals which I will refer to later. All of the applications are, in fact, put in broad terms, seeking coverage of PACTS employees.

I deal first, however, with the applicant organisations. The CSA is an organisation which has represented over many years public servants as such. It has also represented government employees generally, including university employees (not the least in laboratory services). It has also covered and covers some persons employed in health or hospital occupations, PACTS employees, as well as in all sorts of other occupations in the employ of the government directly or through boards, statutory authorities, trading concerns, etc. It has and has had coverage of public service officers, but it has and has had coverage of public service officers in the health "industry" areas. Dental services, psychiatric services, the Health Department, the combined laboratories and public health services are some examples. Most pertinently it has and had coverage of PACTS employees providing health services in fields like dietitians, etc, all over the metropolitan area and the State, those persons being employees of the Commissioner of Public Health. It has also and maintains coverage in combined health laboratory services, and over employees of the combined health laboratories seconded to work for the PATHCENTRE.

The CSA has about 20,000 members of whom 1687 are health industry members. This includes only 246 members in the "health services", the subject of these applications. The Commissioner of Health employs 2000 to 2500 PACTS employees. The CSA has members including those persons categorised as medical scientists who are employees of the combined laboratory service, their services having been made available by the Commissioner of Health, their employer, to the PATHCENTRE, after the commencement of operations at the PATHCENTRE, it having come into operation on 10 April 1995. The CSA claims membership of 237 in the combined laboratory service and 262 members in the State Health Laboratories Service in its branches throughout the State, in all about 500 members (including 280 at the PATHCENTRE). There is some confusion about the first two figures, but the latter figure, and, indeed, the first two figures, reveal a preponderance of CSA membership. There are said to be 1500 CSA members in all affected by these applications. The CSA claims that it has and has had constitutional and award coverage in these areas. The CSA has no coverage in the private sector area.

The CSA is a large organisation with substantial assets and income (although suffering a decline in membership recently). It offers a wide range of normal industrial services, as well as holiday homes, a travel service, a functions booking service and other services.

The HSOA was registered in this Commission and came into being as an organisation in 1954, because the CSA could not, by its eligibility rule, cover employees employed in public hospitals. This was because such employees were not public servants. The HSOA has over that time had substantial coverage both industrially and of PACTS employees employed by public hospital boards.

The HSOA has 3998 members, including 203 unfinancial members, of whom 2775 members are employed in health and pathology services. Fifty percent were employed in clerical and administrative positions, 25% were employed in professional positions and 25% in general or technical positions. In fact, 75% of members were employed in public hospitals and the remainder in private hospitals, nursing homes and charitable organisations. The Hospital Salaried Officers Award No 39 of 1968 (commonly referred to as the Public Hospitals Award) (hereinafter referred to as "the Public Hospitals Award"), a HSOA award, covers 2800 persons. The majority of members are in the public sector. Further, 55% of the HSOA members are employed in public teaching hospitals over which the HSOA has constitutional and award coverage. The HSOA is a small organisation which has suffered some reduction in membership in recent years. However, it provides a range of industrial and other services. The HSOA's claim for exclusive coverage of new PACTS employment positions is said to be consistent with its past coverage. The HSOA has some albeit minor coverage in the private sector area, most notably over the 500 estimated employees in the private health sector.

In the past, both organisations have had discussions about amalgamation. In the past, too, the federal State Public Services Federation Union and the HSOA had affiliated, but that arrangement ended in 1993. The State Public Services Federation Union was a forerunner to the Community and Public Services Union (hereinafter referred to as "the CPSU").

Amalgamation discussions between the CSA and the HSOA in the 1980's came to nothing.

In 1992 there was a referendum conducted in the HSOA in which the members voted to amalgamate with the Health Services Union of Australia (hereinafter referred to as "the HSUA"), a Federally registered organisation of employees with about 68,428 members as at 30 June 1995 (see exhibit 28), including members throughout Australia in the health industry in occupations including 16,432 PACTS employees. Its membership has an emphasis on blue collar or operational occupations, however. The decision of HSOA members to amalgamate with the HSUA was supported and encouraged by the HSOA Executive Committee. Inter alia, the membership in the referendum to which I have referred rejected amalgamation with the CPSU, which is the CSA's counterpart Federal body under s.71 of the Act. The HSUA did not become the HSOA's counterpart Federal body, but became affiliated with that organisation. However, the Secretary of the HSOA, Mr Daniel Patrick Hill, is Branch Secretary of the HSUA's number three branch in this State.

The CPSU has 240,000 members with 30,000 employed in health services and 62% of its health service members employed in PACTS positions throughout Australia.

The HSUA covers 4239 employees in Western Australia. Sixty five percent of members are in operational classifications.

The CPSU has widespread coverage in the "health and hospital industry" and has a significant number of members em-

ployed in health industry areas.

In 1993 the Australian Industrial Relations Commission in s.118A proceedings, by consent of the CPSU, gave coverage to the HSUA of PACTS employees in this State.

There are three awards in the hospital and health services industry in this State which are of significance in these applications. These are the Public Service Award 1992, the Government Officers Salaries, Allowances and Conditions Award 1989 (hereinafter referred to as "the GOSAC Award") (CSA awards), and the Public Hospitals Award (a HSOA award).

As to the private pathology area employees, the HSOA has not organised them because it says that it is too difficult to do so. However, the HSUA has not obtained a Federal award over them because of lack of instructions at State level. There is also some evidence from private pathology employers in this State, which contradicts, to some extent, but partly only, the picture of an industry which is hard to organise because of difficulty in access to employees.

There was a great deal of evidence directed to demonstrating that the performance, capacity or attitude of each applicant was better or greater than that of the other. Both have the capacity to service new members, given that new members pay fees which can pay for any extra staff or services. One area subject to submissions of this nature was in broadbanding, which the CSA achieved in 1985, and which the HSOA achieved in 1989.

It was also a part of the CSA case that the HSOA awards had nexus with CSA awards. In other words, the CSA was the pacemaker and the HSOA the follower. There was evidence in the records of the Commission (see exhibit 71) that, to a not negligible extent, that was the case. However, the HSOA asserted that it won conditions more specifically tailored to the employment of hospital employees, and that there was a greater career for a whole range of occupations because of the broadbanded structure.

There was evidence, in the case of each organisation, of some reduction in membership over the last few years and some deterioration in the financial situation of both organisations. Mr John Kirwan, a former Secretary of the HSOA, now an officer of the Health Department, for example, said that the HSOA needed to grow from 4500 to 5000 members to be self-sufficient. In the case of the HSOA, the evidence is that it could have done more than it has done to obtain a Federal award through the HSUA for private pathology laboratory employees and to have organised them. The HSOA has coverage of those employees. On the other hand, the CSA services its health members as part of its community services and health portfolio and not as health members per se. However, the evidence was not sufficient to say that either organisation was inoperable, was not able to generally service its members, or was in serious financial difficulty. Indeed, on the evidence, the opposite, at least for the time being, was the case. I am satisfied, however, that the CSA has vastly more resources and is the major government employee organisation in the State. Both organisations are parties to a large number of awards or agreements.

RESTRUCTURING AND RECENT DEVELOPMENTS

It was strongly submitted to us that the applications were necessitated by a recent fundamental restructuring of the Western Australian public hospital/health services industry which had, as one of its consequences, the creation of new PACTS employment positions by hospital boards and a new agency board known as the PATHCENTRE. Public hospitals in this State are and were administered by public hospital boards created under the Hospitals and Health Services Act and consisting of a number of members in many cases. In some cases, the board, however was and is constituted by the Minister for Health, and the actual administration was carried out by officers of the Health Department of Western Australia in his name. All of the boards were and are separate legal entities. In 1993 a process which I shall call "regionalisation" occurred in the metropolitan area and in the country. The hospital boards became the centre of a region providing administration of all health services in each of 45 regions. These services were to and do include psychiatric services, dietary services, geriatric services, child health services, and psychiatric extended care services, etc. Accordingly, those employees providing professional health services or administrative services outside the hospital came under the management of the chief administrator based at the public hospital within each region, or, in the case of some country areas, a manager answerable to the board of one or more public hospitals within a region where previously these persons were directly administered by the Health Department. A version of this process is referred to in exhibit 15, document 9, a letter from The Honourable Peter Foss MLC to Dr Geoffrey Gallop dated 26 August 1994. Exhibit 15, document 20, a letter dated 13 June 1995, from Dr Michael McCall to the Chief Executive Officers of health services, sets the system out, too.

There was, and this continues to be the case, an integration of specialist health services based upon and around public hospital boards. The positions of public servants will be and are being abolished and employees who were previously public service officers will, if they are not employed by the hospital boards, be the responsibility of the Commissioner of Health.

There was one other step to be taken in that regard or to be taken and that was the purported creation of autonomous and independent entities in about 45 districts, known as "health services", based on existing hospital boards which is then integrated or said to be integrated into one administrative and legal entity as one employer providing hospital and health services within a particular geographical area within the State. These are said to have been created by the January 1995 amendments to the Hospitals and Health Services Act. (Whether such health services exist, what their status is and whether they are enterprises as defined in s.72A of the Act are questions for me to consider in due course).

The existing management services are variously identified by the assignment of the name of the public hospital (for example Armadale-Kelmscott District Hospital Board; the name of the locality, for example Peel Health Services Board, which is the board of the Mandurah and Murray District Hospitals and the Dwellingup Nursing Post; or the name of the region, for example the Lower North Metropolitan Health Service Board, being the Osborne Park Hospital Board).

The Commissioner of Public Health will continue to employ persons in psychiatric services, public health services, dental health services and in the department.

One essential feature of the restructuring was the creation of providers within the health system (see exhibit 15, the FOPP model (Funder, Owner, Purchaser, Provider)). However, this system actually was discarded (see exhibit 81) as at 24 November 1995. What it did do was replace the historical funding model with a different funding model. However, the funding for hospital boards remained funding by the government, with monies from consolidated revenue. The funder/owner/purchaser aspects of the scheme were incorporated after 24 November 1995 within the confines of the Health Department of Western Australia with the Commissioner of Health as an employer and the providers being the boards of management of the hospitals. The change in funding method did not and does not in any way change the fundamental character of the hospital boards and other services as government bodies created by statute with their functions and entities prescribed by the statute and controlled, supervised and funded by the government of the day pursuant to the statute, nor does it change the funding of agencies. The State government still owns the system which has been created under the Hospitals and Health Services Act. This conclusion is supported by the following facts. As far as the proposed "health services" are concerned, their character, on the evidence, depends on the following—

(1) The Health Department of Western Australia controls the public health and government hospital system in Western Australia.

(2) All of the monies to provide services come out of consolidated revenue. (I do not deal with revenue from medical benefit payments here, but the fact that this revenue is generated does not alter the essential public character of public hospitals and the health services in their district or region). In all of this, there still exists the centralised planning and administration function of the whole integrated health system by the Health Department of Western Australia. The service or industry remains the government health service or industry almost exclusively (if not exclu-

sively) run by government officers.

I should also add that under the 1995 amendments to the Hospitals Act 1927, which became the Hospitals and Health Services Act, s.2 entities called "agencies" were created. The PATHCENTRE is one. Agencies also are to be administered by boards, under the Hospitals and Health Services Act.

It was part of the HSOA's case that the restructuring would take the public service flavour out of the "hospital and health services industry". There is some substance to that submission.

The CSA obtained advice that the creation of health services outside the public hospital structure provided by the Hospitals and Health Services Act was done ultra vires the Act.

The CSA has had coverage over all persons employed by the Commissioner of Health and in the Health Department of Western Australia and in special services provided in the city, suburbs and country in this State. The employees were, of course, all public servants. The HSOA had and has had coverage over the years over all persons employed by public hospital boards.

The largest award in operation in health services for PACTS employees in this State is the Public Hospitals Award.

In government health in Western Australia there are 23,000 full-time employees covered by 17 unions, but 80% to 90% are covered by The Australian Nursing Federation, Industrial Union of Workers, Perth, the ALHMWU, the HSOA, the AMA, the CSA and the West Australian Psychiatric Nurses' Association (Union of Workers).

Further, the emphasis on the ability to compete with or join in an enterprise with a private sector provider is not sufficient to detract from the essential government administered and controlled nature of the boards. In any event, it is not obvious to me from the evidence, even that of Mr Kirwan, what this involvement with the private sector actually means and how much other legislation, such as the Finance and Administration Audit Act 1985 might permit it.

Undoubtedly, however, the fundamental change, if it has occurred or when it occurs, will leave a single employer model in which each health service and hospital board will employ all employees within its geographical health service area, whether they work at the hospital itself or not. The "public service" areas, including the purchasing apparatus, will remain in the Commissioner of Health's "office". The majority will not be operating by the end of the year, on the evidence.

Persons formerly employed by the Commissioner of Health will be transferred from the Commissioner of Health to new employment by each hospital board. In some cases, this has occurred. A number of these employees were or are employed by the Commissioner of Health and were or are public servants. Indeed, there was evidence from Mr Hill, the Secretary of the HSOA, that there had been an administrative transfer of employees from the Health Department of Western Australia to the employment of boards.

PSYCHIATRIC SERVICES

In relation to psychiatric services, it was conceded that the HSOA had not had "traditional" coverage of employees of a hospital or institution. However, as a matter of fact, there are now a number of community psychiatric care extended units called PECUS which are to be integrated into the "health services". The one at Osborne Park is an example. Employees will be transferred from the employment of the Commissioner of Health. That is not so with psychiatric services, and no order is sought currently with the employees in that area.

PUBLIC HEALTH SERVICES

As to public health service employees, these are and will remain employees of the Commissioner of Health, and the HSOA sought and was granted leave by the Full Bench to withdraw its application.

DENTAL SERVICES

As to dental services, the HSOA restricts its application of exclusive coverage (with the exception of dentists) to the Perth Dental Hospital which it says it has always covered. No orders are sought in relation to the Perth Dental Hospital (see page 2145 of the transcript).

THE PATHCENTRE (THE WESTERN AUSTRALIAN CENTRE FOR PATHOLOGY AND MEDICAL RESEARCH)

S.247G of the Health Act 1911 (as amended) provides as follows—

"(1) For the purpose of providing diagnostic and related services to meet the requirements of the Department, the public hospital service and other bodies and persons there shall be a Health Laboratory Service which shall form part of the Department.

(2) The branch of the Public Service known as the State Health Laboratories heretofore established shall hereafter be, and be maintained as, part of the Health Laboratory Service.

(3) The Minister may enter into arrangements with any hospital, university or other body or person with respect to the supply of laboratory or other related services either to the Health Laboratory Service or, at the request of any person, by the Health Laboratory Service.

(4) Subject to the Public Service Act 1978, there shall be appointed such officers and other staff as may be requisite to provide and maintain the services to be rendered.

(5) There shall be appointed by the Minister a committee to advise on any proposal to expand any existing laboratory service or to set up any new service, and such other committees as may be required for the purposes of the Health Laboratory Service, and the constitution and terms of reference of any such committee shall be such as the Minister may determine.

(6) The Governor may make regulations for and in respect to the Health Laboratory Service, and may prescribe fees and charges to be paid for the services rendered by the Health Laboratory Service."

The effect is that there is required to be a health laboratory service which is to form part of the Health Department of Western Australia. Its officers and staff are to be appointed pursuant to the Public Sector Management Act 1994 (as amended). Until that section is amended, that obligation exists. Indeed, there cannot, as a matter of law, be a health laboratory service outside the Health Department, unless s.247G is amended.

At Sir Charles Gairdner Hospital, and at other hospitals in the metropolitan area and in the country, there exist and existed laboratory services. The laboratory services were, in the past, provided by a body called the combined laboratory service. These services were provided by the following—

(1) The teaching hospitals.

(2) The hospital and university service situated at Sir Charles Gairdner Hospital.

(3) The State Health Laboratory Service with various country branches (about 20 to 30).

The main laboratory was, of course, at Queen Elizabeth II Medical Centre. There were about 1100 employees in all. The State Health Laboratories employed public servants, many of whom were CSA members, because it was a Health Department branch. In May 1993 the Minister for Health announced that all of these laboratories would be combined in one entity.

On 3 March 1995 the PATHCENTRE was gazetted as an agency established pursuant to s.7B of the Hospitals and Health Services Act. It was established for a number of expressed purposes—

(1) Providing pathology services to meet the requirements of the Department, public hospitals, private hospitals, public patients, private patients, medical practitioners and any other person or body.

(2) Providing clinical teaching or research facilities or both for pathology services.

(3) Acting as reference centre and centre of excellence for pathology services.

(4) Providing public health services and advice to the Health Department, any other departments of the State or Commonwealth or agency of the State or Commonwealth, any local authority and any other person or body.

(5) Providing forensic science services to the public and private sectors.

(6) Undertaking commercial exploitation of any research undertaken by, or of any intellectual property rights belonging to, the PATHCENTRE for any purpose relating to the carrying on of the agency.

By the gazettal, the PATHCENTRE came into operation as an agency under the Hospitals and Health Services Act on 10 April 1995. Prior to this coming into being, the Commissioner of Health was the employer of employees at the State Health Laboratories, which was a branch of the Health Department of Western Australia. As part of the restructuring, the State Health Laboratories will be closed and the Commissioner of Health will no longer employ public servants to provide pathology laboratory services in any of the laboratories to which I have referred above.

At the time of hearing these applications, the PATHCENTRE had only seven employees and relied on the employees of the other entities which still existed, whose services, it would seem, were directed to be made available to it free of charge. No organisation chart of the PATHCENTRE was available at the time of hearing of these applications. There are currently 500 employees at the PATHCENTRE to date, all on loan. Although it was not clear, they would, as a matter of law, not be able to perform s.247G functions, except within the Health Department. However, it was clear that a number of employees of the existing services would not be able to obtain employment with the PATHCENTRE if and when it offers employment. It was clear, however, that employees of the existing laboratory services who did not obtain employment by the PATHCENTRE would have to obtain employment elsewhere or be redeployed. It was also clear, and I am so satisfied, that a number of employees could be employed only on reduced grade classifications, that is reduced from the classifications they enjoyed in the old laboratory set-up.

There was a number of attempts by the CSA to ascertain from those representing the PATHCENTRE in the Department of Health who or what would be the employer, as a matter of law, of the PATHCENTRE employees. It is clear, on the evidence, that no satisfactory answer was given and that attempts to obtain a satisfactory answer were fruitless. The CSA was concerned about the future of its employees. It took action in the Supreme Court. There was at least one stop work meeting of its employees on 16 June 1995, and it was not involved in negotiations in the early stages. The CSA did seek a variation to the GOSAC award, or perhaps a Federal award to cover its employees. Workplace agreements were favoured by those representing the employer. At one stage in the process, when an application was made to vary the award, the CSA succeeded with a submission that the matter was not an industrial matter. The CSA's attitude was described at a minimum as unco-operative.

The HSOA, on the other hand, was, at all times, attempting to reach some arrangement with those representing the PATHCENTRE, which would mean that workplace agreements did not regulate the employment of the employees at the PATHCENTRE.

Those representing the PATHCENTRE did refuse to negotiate with the CSA on the basis that they had advice from the Crown Law Department that there was no constitutional coverage in the CSA. This was specifically said at a meeting on 21 June 1995, and this was admitted by Mr Serich to have been a negotiating tactic.

The HSOA attempted to negotiate and negotiated, in fact, a s.41 agreement with the PATHCENTRE, which was acknowledged by Mr Panizza to be not brilliant, but said to be the best that they could achieve.

In June 1995 there was a balloting by the HSOA of all employees at the combined laboratories, whether HSOA members or CSA members or not, as to the question of the s.41 agreement proposed by the Commissioner of Health's officers with the PATHCENTRE. The CSA advised its members not to answer the survey. The results of the ballot were as follows. There were 50 valid votes from less than 500 employees, 30 for, 19 against, in the vote approving the making of a s.41 agreement. At one stage, too, the CSA advised its members not to take up offers at the PATHCENTRE until things were clarified. By virtue of the fact that they had members currently employed in the laboratories which would be affected by the restructuring and by the establishment of the PATHCENTRE which would become a new employer, the HSOA said that it sought to secure for the prospective employees protection by way of a s.41 agreement. At the same time, of course, the HSOA sought in making the agreement to represent CSA members, and, indeed, everyone who might become an employee of the PATHCENTRE.

Mr Hill also said that, at all times, they sought to consult with the employers. This occurred against a background of those persons representing the PATHCENTRE refusing to deal with the CSA because they said it had no constitutional coverage, declining to identify who would be the employer of PATHCENTRE employees, and, in fact, favouring the HSOA, resulting in a s.41 agreement. In turn, the CSA took action in the Supreme Court, and in the Commission sought to amend the GOSAC award to add the name of the PATHCENTRE as a respondent, and all to no avail, because of the plea that there was no industrial matter and no jurisdiction because the PATHCENTRE had no employees. All of this was accompanied by uncertainty at first as to whether there would only be workplace agreements offered. I should also add that there was evidence of general disquiet about the future of their employment, amongst CSA members. After some importuning, an undertaking was given that that would not be the case. CSA employees had, as a result, engaged in stop work meetings in June 1995 at least. The HSOA balloted all employees, including CSA members, as to the s.41 agreement in June 1995, as I have said, and the CSA, not surprisingly, took umbrage and advised its members not to participate in the ballot.

It was suggested that the CSA had been unco-operative, but given the way in which it was treated that cannot be a matter of criticism. Indeed, I am satisfied that the CSA, having started off trying to negotiate and co-operate, then reacted to the approach adopted by those representing the future PATHCENTRE and later the PATHCENTRE itself. The latter plainly favoured the HSOA, as Mr Serich in the end told us that it did.

The HSOA preference had been a s.41 agreement with State awards as the underpinning safety net. The fall back position was the Federal system, and, at all times, it should be recalled that the HSOA had a very small membership of about 10%.

I am not, in the circumstances, satisfied that the CSA was at all obstructionist. The HSOA had unilaterally purported to represent its members, poll them and enter a s.41 agreement on their behalf. The CSA was justifiably concerned about this.

The PATHCENTRE had re-organised under one agency as one employer a service conducted in the same way from the same premises by three different employers where there were 412 CSA award employees on site, and, in fact, still are. There were 40 HSOA covered employees in the Sir Charles Gairdner Hospital laboratory (see Mr Hill's evidence at pages 522 and 644 of the transcript). There was a longstanding pattern of substantial CSA coverage and minor HSOA coverage.

In due course, the HSOA executed a s.41 agreement and there was an application made to the Commission to register it in PSA AG 2 of 1995 (WA Centre for Pathology and Medical Research v HSOA 75 WAIG 3308). The Commission, on 1 November 1995, made an order registering the agreement, which has a limited term of six months. The operation of the order was later stayed by order of the President made on 28 November 1995, a notice of appeal having been filed by the CSA against the decision of the Commission at first instance (see CSA v WA Centre for Pathology and Medical Research and Another 75 WAIG 3177). Mr Panizza conceded that the agreement was not brilliant but said that the HSOA took this step in order to protect the prospective employees and the employees of the PATHCENTRE from workplace agreements and the loss of conditions. The CSA, on the other hand, was very critical of the HSOA's unilaterally deciding to enter into an agreement which covers its members, or those whom in future it claims coverage over. Mr Panizza also conceded that there would be a reduction in conditions of service (see page 1201 of the transcript).

I would also add that there are a substantial number of organisations with coverage in the hospital and health services area and in the PATHCENTRE's enterprise. However, only two, the applicants, cover PACTS employees.

A SUMMARY OF FACT FINDINGS

Those, except for some other observations which do not relate to matters of fact, are the facts which I find in this matter, having carefully observed all of the witnesses and considered all of the evidence, both oral and written. However, most saliently, I am satisfied that—

(1) All public hospital boards (and others) are bodies corporate, as are agency boards.

(2) (a) There has been little history of disputation between the applicants up until 1995 when differences of a substantial nature arose over coverage of PATHCENTRE employees.

(b) There is no evidence of any work having been lost in the hospital and health services industry through any demarcation disputes between the HSOA and the CSA.

(c) What is intended (and in some areas achieved) is that the hospital boards administer and are the centre for the provision of hospital services and health services in given areas, as I have described them above.

(d) There has been disputation over coverage of employees at the PATHCENTRE, an area in which the CSA has historically had the preponderance of coverage and the HSOA little.

(3) The PATHCENTRE and the hospital based health services will remain government controlled, financed, administered and regulated organisations, and the ability and injunction to compete and enter projects with foreseeably private sector entities will not significantly alter that fact. The restructuring will not substantially alter the nature of what public hospital boards do. Indeed, the health services, if provided at hospitals, would be hospital services.

(4) (a) The CSA was not obstructionist in attempts to negotiate and in other steps which it took in relation to matters involving the PATHCENTRE.

(b) The approach taken by those representing the PATHCENTRE, both in prospect and after it came into being, was a major contributing factor to any problems which arose with the CSA. In fact, the CSA was, at first, conciliatory, and, indeed, encouraging in its correspondence with the Minister for Health.

(5) The HSOA, which had a historically very small coverage in a CSA area, attempted opportunistically and unilaterally to cease coverage and enter a s.41 agreement with the employer PATHCENTRE on behalf of members over whom the CSA had award and constitutional coverage.

(6) Both the CSA and the HSOA have connections with federally registered organisations each of which has significant coverage of health service employees and these associations are beneficial to the CSA, the HSOA and their members.

(7) The HSOA is by numbers and origin primarily a government hospital based organisation, but with some coverage in the private health sector.

(8) The CSA is by numbers and nature a government employee organisation, but with longstanding coverage of some health services members.

(9) The CSA has had longstanding and substantial coverage in the public health laboratories area.

(10) There was no evidence of HSOA member satisfaction with the HSOA in the public health laboratory area or in the hospital and health services area.

(11) There was uncontroverted evidence from CSA members that they wished to remain CSA members in both areas.

(12) The employers and prospective employers clearly prefer and preferred HSOA coverage in the hospital and health services area and in the PATHCENTRE.

(13) The CSA, by virtue of its size and pre-eminence in the government employment area, and which is not restricted to public servants by its constitution, was a leader in the field of broadbanding, and the HSOA benefited from the nexus which developed over the years between public service awards and hospital awards.

(14) Both organisations have substantial award coverage in the hospital and health industry area. The HSOA is the pre-eminent organisation in the public hospital area and has been for many years.

(15) The large majority of employees in the combined laboratories were entitled to CSA coverage and were and are employees of the Commissioner of Health.

(16) The majority of PACTS employees in the "hospital and health services" were and are eligible for HSOA coverage and were employed and are employed by hospital boards.

(17) I also find that both organisations have served their members adequately and are capable of doing so in the foreseeable future.

(18) The employers or prospective employers favour HSOA coverage.

HOSPITALS AND HEALTH SERVICES ACT

There are a number of features of the Hospitals and Health Services Act. Important amendments to the Hospitals and Health Services Act were passed through the Parliament in January 1995, effected by the Hospitals Amendments Act 1994. The long title of the Hospitals and Health Services Act is "AN ACT to provide for the establishment, maintenance, and management of public hospitals and for the control and regulation of private hospitals, for the provision of other health services incidental and other purposes". The short title is "The Hospitals and Health Services Act 1927".

There is no definition of "health services" in the Hospitals and Health Services Act. The Hospitals and Health Services Act creates agencies established under s.7B(1) and "agency boards" under s.7C. The PATHCENTRE is such an agency and has been duly created.

A "day hospital facility" is defined as follows in s.2 of the Hospitals and Health Services Act—

> ""**day hospital facility"** means premises that are not attached to, or, that are set apart from a hospital being premises at which persons are received for professional attention or professional medical attention in a class of professional attention determined by the Minister under subsection (3) to be professional attention but not being premises at which overnight accommodation is provided;"

"Hospital" is defined in s.2 as follows—

> ""**hospital"** means an institution for the reception and treatment of persons suffering from illness or injury, or in need of medical, surgical or dental treatment or assistance, and includes a maternity home or maternity hospital, day hospital facility, nursing home or nursing post;"

"Hospital service" is defined in s.2 as follows—

> ""**hospital service"** includes accommodation, maintenance, care, and all other services rendered, goods supplied or work done at, by or on behalf of a public hospital, in relation to the person in question;"

"Nursing home" is defined in s.2 as follows—

> ""**nursing home"** means premises in which persons who do not require constant medical attention are received as patients and lodged for the purpose of medical supervision and nursing care but does not include any premises declared by the Minister under section 3 not to be a nursing home for the purposes of this Act;"

"Nursing post" is defined in s.2 as follows—

> ""**nursing post"** means a place at which a nurse is stationed and at which facilities exist for medical attention but which is not normally used for the accommodation of in-patients;"

"Public hospital" is defined in s.2 as follows—

""**public hospital"** means any hospital that is—

(a) conducted or managed by—

(i) a board constituted under this Act; or

(ii) the Minister under this Act;

or

(b) declared to be a public hospital under section 3;"

S.3 of the Hospitals and Health Services Act prescribes as follows—

"**Application of Act**

3. (1) This Act applies to any private hospital and any public hospital howsoever founded or maintained (whether wholly or partly by or under governmental authority or otherwise), and continues to apply to any part of a public hospital despite the fact that an order under section 19(3) of the Mental Health Act 1962 is in force in relation to that part declaring it to be an approved hospital but otherwise does not apply to any institution which is an approved hospital within the meaning of, and subject to the Mental Health Act 1962, or to any hospital used exclusively in connection with a prison.

(1a) ...

(2) The Minister, acting on the written recommendation of the Executive Director and with the consent of the governing body of the institution, may by notice published in the Gazette declare any institution to be a public hospital subject to and for the purposes of this Act.

(3) The Minister may by notice published in the Gazette declare that any institution is not a public hospital, or is not a nursing home, as the case may be, for the purposes of this Act.

(4) The Minister may by notice published in the Gazette declare that any institution is a teaching hospital for the purposes of this Act.

(5) The Minister may by notice published in the Gazette declare any person practising in the field of health or medicine to be a practitioner for the purposes of this Act."

The Minister for Health has a duty to provide throughout the State, to such extent as he considers necessary to meet all reasonable requirements, hospital accommodation, hospital services, whether at a public hospital, or, if necessary, on medical grounds, elsewhere and health services (see s.5A of the Hospitals and Health Services Act). The duty of the Minister under this section (s.5A) may be discharged by making arrangements, on such terms, which may include the payment of charges, as the Minister thinks fit for securing the performance of any service on behalf of the Minister (see s.5A(3)). It is noteworthy that the duty of the Minister does not extend to any matter within the exclusive administrative competence of any institution, other than a public hospital, unless by and with the consent of the governing body of that institution (see s.5A(4)).

There are a number of general powers conferred on the Minister for Health under s.7A of the Hospitals and Health Services Act. This includes a power to provide diagnostic and related services and any other prescribed services to meet the requirements of the Department, public hospitals and other bodies and persons (see s.7A(1)(ba)).

What is important is that s.7A(2), for the purposes of the performance of the duties or functions imposed or conferred on the Minister, confers on the Minister the power to enter into contracts and make arrangements on such terms and conditions which may include the payment of charges as the Minister thinks fit. The Minister may for those purposes, in the alternative, make arrangements for the provision of services by an agency or agencies, or he may do both.

By s.7B of the Hospitals and Health Services Act, the Governor is empowered to establish an agency or agencies, or amalgamate two or more existing agencies and establish the amalgamated agency as an agency for the purpose of carrying out any duty or function conferred on the Minister by or under the Hospitals and Health Services Act (see s.7B(1)). An agency established under s.7B is prescribed to be taken to be expressly authorised by Parliament for the purposes of s.4(2) of the State Trading Concerns Act 1916 (see s.7B(3)). Such agencies are prescribed to be bodies corporate administered by a board.

Hospitals, too, are conducted by boards constituted by a number of persons or by the Minister. All such boards are bodies corporate (see s.15 of the Hospitals and Health Services Act). The management and control of a public hospital is vested in the hospital board constituted in relation to it and every board is a body corporate (see s.15).

The Governor may by notice published in the Government Gazette "re-organise hospital boards" (see s.16 of the Hospitals and Health Services Act). However, that power is limited. The Governor may, where a board is constituted in relation to two or more public hospitals, constitute a separate board in relation to any one or more of those hospitals, or where a board is constituted in relation to one or more public hospitals, amalgamate the former board with one or more other boards to form a new board (see s.16(2)(a) and (b)).

The Governor may amend the corporate name assigned to an original board and shall assign a corporate name to an additional board, but he can do that only when he re-organises public hospital boards as prescribed in s.16(2) and in the Government Gazette, the notice by which he re-organises the boards (the relevant notice), and must specify in that notice the public hospital or hospitals in relation to which the boards so named are constituted. In other words, the mere change of name removed from the process of re-organising a board or boards cannot be done "intra vires". In these proceedings there was no evidence that the change of name had anything to do with the re-organisation of hospital boards. What occurred here was that the Minister for Health purported to re-name hospital boards as health services. That was not done as part of the re-organisation of the boards in accordance with s.16, and was therefore done ultra vires. In any event, the mere changing of the boards' names did not reconstitute them as health services. However, as I will say later, that is of very little relevance. Accordingly, the gazettals of changes of name for public hospital boards referred to in these proceedings were ultra vires the Hospitals and Health Services Act.

The question is, of course, whether, as Mr Nisbet submitted, a hospital board can act within power and provide health services at a place removed from the hospital, as some are now purporting to do, and as it is mooted that they all do. Indeed, this question goes to the essence of the integrated system.

Under s.18 of the Hospitals and Health Services Act, a board is made mandatorily (see the use of the word "shall" and s.56 of the Interpretation Act 1984 (as amended)) responsible for the control, management and maintenance of the public hospital or hospitals for which it is or has been appointed, "and may exercise such other duties and functions for the purposes of this Act, as may from time to time be prescribed". The board may provide any facility in the hospital for the use of a practitioner for carrying out any hospital, medical or other service (see s.18(1a)). By s.18(2), the Minister may, after consultation with a hospital board, give to it directions as to the exercise of its functions, but no such direction shall be given concerning the nature of the medical treatment to be provided in relation to a particular patient. S.18(2a) prescribes that notwithstanding the State Trading Concerns Act 1916, the board of a public hospital, in addition to performing its functions, may either alone or in conjunction with any other person or body, with the prior approval of the Minister, provide services to the Minister, the Department or any other person or body upon such terms and conditions, including payment for those services, as that board thinks fit. "Services" is defined in s.18(2b) to mean services of the kind that the board in question provides for the purpose of performing its functions, and includes advice, the performance of work and the use of facilities.

Under s.19 of the Hospitals and Health Services Act, boards are empowered to appoint officers and servants, and all persons so appointed may be paid out of the revenues of the board such salaries, wages or remunerations as the board thinks fit.

S.21 of the Hospitals and Health Services Act provides for

the board to apply any moneys in its hands in such proportions and in such manner as it thinks fit for each or any of a number of purposes. These include the maintenance of the public hospital under its control, and the provision of hospital services and health services.

A question arises in this case whether hospital boards, as a matter of law, can, as the law presently stands, conduct health services and employ persons for the purposes of providing such health services. That is because the boards of public hospitals are now, or will in due course, not only administer the public hospital, of which they are the boards, but are providing or will provide, employing persons to do so, "health services" which were, in the past, and in some cases still are, provided by the Commissioner of Public Health through his employees employed by him under the Public Sector Management Act 1994 (as amended).

The CSA's argument very strongly was that there was no power contained in the Hospitals and Health Services Act to enable the boards of public hospitals to provide services outside the hospital gates. If that argument is right, then, insofar as such services are provided by the boards of hospitals and they are employing persons to do so, they are doing so unlawfully. The Commission cannot presume that the Act will be amended to enable this to be done lawfully in the future. That is a matter for Parliament. The law must be applied as it stands. Acts done or performed without the authority of the law as it stands are, it is trite to say, unlawful. The law is not what administrators would like it to be or hope it will be. Accordingly, the Bill to amend the Act tendered to us cannot concern us here.

Firstly, a "nursing post" as defined is a "hospital" as the latter is defined. Secondly, a "day hospital facility" as defined is also a "hospital" as defined. Thirdly, a hospital is primarily an institution for the reception and treatment of persons suffering from illness or injury or in need of medical, surgical or dental treatment.

As I have said, the mere gazettals of change of name from hospital to health services are ultra vires the Hospitals and Health Services Act because the changes of name were not made for the purposes of s.16(1) of the Hospitals and Health Services Act or at the same time as the power of the Governor to re-organise was exercised under s.16(1). Indeed, there is no evidence of any exercise of such power by the Governor.

The Minister may, after consultation with a hospital board, give to it directions as to the exercise of its functions. However, no such direction shall be given concerning the nature of the medical treatment to be provided in relation to a particular patient (see s.18(2a) of the Hospitals and Health Services Act).

A board is responsible for the control, management and maintenance of a public hospital or hospitals. The board is empowered under s.21 of the Hospitals and Health Services Act to expend moneys on health services, and the Minister has a responsibility under that Act to provide health services which are not hospital accommodation and which are not hospital services. I say that because in s.5A of the Hospitals and Health Services Act hospital accommodation, hospital service and health services are separately and disjunctively referred to. "Hospital service" is defined. "Health service" is not defined.

The boards are authorised to apply moneys for the provision of hospital and health services (see s.21(1) of the Hospitals and Health Services Act), and a board may exercise such other duties and functions for the purpose of the Hospitals and Health Services Act as may from time to time be prescribed.

The question is whether a public hospital board is empowered under the Hospitals and Health Services Act to employ persons to provide "health services" outside the hospital. That is what they are directed to do under the policy for the integrated system. However, if there is no authority to do so under the Act, then the restructuring, based on the premise that a hospital board can do so, has been unlawfully effected.

(1) An agency is established under s.7B of the Hospitals and Health Services Act and is established for the purposes of carrying out any duty or function carried out by the Minister by or under the Hospitals and Health Services Act.

(2) A hospital becomes a public hospital if it is conducted or managed by a board constituted under the Hospitals and Health Services Act or is declared to be a public hospital under s.3 (see s.2 of the Hospitals and Health Services Act).

(3) (a) A hospital is a hospital as defined if it is an institution for the reception and treatment of persons suffering from illness or injury.

(b) If it is not an institution for the reception of persons suffering from illness or injury it is not a hospital, unless it is an institution for the reception and treatment of persons (persons in need of medical, surgical or dental treatment or assistance). As the definition demonstrates, this includes, inter alia, a day hospital facility, a maternity home, a nursing post, etc.

(c) The words "dental" and "surgical" require no definition. The word "medical" means (see The Macquarie Dictionary, 2nd Edition) "**1.** of or pertaining to the science or practice of medicine. **2.** curative; medicinal; therapeutic ...".

(d) In this case, the word "medical", read with "surgical", means treatment by or at the direction and under the supervision of a medical practitioner.

(4) (a) A hospital can also mean a day hospital facility (where no overnight accommodation is provided). That is a facility which by definition is set apart from a hospital. However, a day hospital is a premises at which persons receive professional attention or professional medical attention in a class of professional attention determined to be professional attention under s.2(3) of the Hospitals and Health Services Act.

(b) Under s.2(3), the Minister may determine any professional medical attention to be professional attention for the purposes of the definition of "day hospital facility".

(c) Until that is done in relation to any such premises set apart from the hospital, then such premises are not a day hospital facility and therefore not a hospital.

(5) A "nursing home" as defined and a "nursing post", as defined (see s.2 of the Hospitals and Health Services Act) are hospitals for the purposes of the Hospitals and Health Services Act.

(6) The Hospitals and Health Services Act applies to any public or private hospital as defined in s.2 (see s.3 of the Hospitals and Health Services Act).

(7) The Minister has control of the general administration of the Hospitals and Health Services Act, and has a duty to provide throughout the State, to such extent as he considers necessary to meet all the reasonable requirements, three separate categories of services. These are—

(a) Hospital accommodation (which is not defined).

(b) Hospital service (as defined), whether at a public hospital, or, if necessary on medical grounds, elsewhere.

(c) Health services (which is not defined).

What that means is clear. The Minister has a duty, as prescribed by s.5A(1) of the Hospitals and Health Services Act, to provide accommodation to people in hospitals, hospital services prescribed and health services. He is not required to provide hospital services at a public hospital if it is necessary on medical grounds that he do so elsewhere. That means, however, that the Minister can only provide hospital services elsewhere if the medical necessity is that he do so, and not for any other reason. The Minister must otherwise provide, or ensure that there are provided,

hospital services at a hospital as defined.

(8) Health services can plainly be provided by an agency as defined created under the Hospitals and Health Services Act. There is no doubt about that. Health services would, by definition, be something other than hospital services as defined, because the two are separately and mutually exclusively defined. One must look to what health services are, apart from the fact that they are not hospital services. The phrase "health services" is not a helpful phrase. In The Macquarie Dictionary, 2nd Edition, principal definitions of "health" are "**1.** soundness of body; freedom from disease or ailment. **2.** the general condition of the body or mind with reference to soundness and vigour ...". Hence, it is fair to say that the concept of health, as ordinarily understood, covers the functioning of the body, and in relation to that, freedom from disease or ailment. Health services are therefore those services which are not hospital services, but which are directed to improving, maintaining or bringing about soundness and vigour in body and mind, and ameliorating the condition of those who suffer from lack of soundness, vigour or less than full function of mind and/or body. However, health services are not, it would seem, intended to be services offered at a hospital, unless they are provided under medical supervision when they would, in any event, be hospital services not health services. The question is whether the Minister can lawfully require a public hospital board to provide health services under the Hospitals and Health Services Act, and whether a hospital can lawfully do so away from the public hospital premises.

(9) S.21(1)(e) of the Hospitals and Health Services Act prescribes that a board (which is defined in s.2 to mean a hospital board constituted under s.15 and a board constituted by the Minister) may apply any moneys in its hands in such proportions and in such manner as it thinks fit for any one of a number of purposes, including the provision of hospital services and health services.

A board is required by s.18 of the Hospitals and Health Services Act to be responsible for the control, management and maintenance of the public hospital or hospitals for which it is or has been appointed. However, a board may exercise such other duties and functions for the purposes of the Hospitals and Health Services Act as may from time to time be prescribed (see s.18(1)).

The Minister, indeed, after consulting, may give a hospital board directions as to the exercise of its functions generally speaking.

Whilst the Hospitals and Health Services Act has conferred power on public hospital boards to spend moneys on health services, that Act confers no specific power on hospital boards to provide health services or to exercise its powers outside what a hospital is defined to be. However, if a public hospital board is authorised to apply moneys to the provision of hospital services and health services, and there is a power in it and a duty cast upon it (as there is) (see s.18(1)) to perform the various functions which the Hospitals and Health Services Act may confer upon it, it is reasonable to imply that the hospital board is authorised to provide health services apart from the hospital: that is, in places or premises apart from the public hospitals, which are not day care hospitals, and to do so through its employees.

I would therefore read the Hospitals and Health Services Act as authorising the provision of "health services" and the funding of them, as I have described them above, away from hospital premises, provided that this occurs through a duly constituted hospital board which administers a public hospital. I think that that is a reasonable meaning to extract from the provisions in the context of the whole of the Hospitals and Health Services Act, notwithstanding that the drafting leaves something to be desired.

In the end, I conclude, for those reasons, that a hospital, whilst it might fund a health service, must, as a corollary, have the power to conduct one, and that power is confirmed by reference to s.21(1) of the Hospitals and Health Services Act to which I have referred above.

In the end, too, I am not persuaded that the establishment of integrated services in the manner set out in the evidence, and of which there is ample evidence that this is occurring and will occur in 45 districts throughout the State, is or was unlawful.

As to the changes of name of the hospital boards, the fact that these were effected ultra vires does not affect the lawfulness of the provision of health services by public hospital boards away from public hospital premises.

S.72A OF THE ACT

S.72A(1) and (2) of the Act read as follows—

"(1) In this section—

"enterprise" means—

(a) a business, or part of a business, that is carried on by a single employer;

(b) a business, or part of a business, that is carried on by 2 or more employers as a joint venture or single enterprise;

(c) activities carried on by a public authority, or part of those activities; or

(d) a single project, undertaking or place of work;

"organization" means an organisation of employees.

(2) An organization, an employer or the Minister may apply to the Full Bench for an order—

(a) that an organization has the right, to the exclusion of another organization or other organizations, to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization;

(b) that an organization that does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise has that right;

(c) that an organization does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization."

The Full Bench was able to hear the applications because they were published in the Western Australian Industrial Gazette and 30 days had expired since the day of publication before these applications were heard (see s.72A(3) of the Act).

By virtue of s.72A of the Act, an organisation, an employer or the Minister may apply to the Full Bench for an order in terms of any one of the under-quoted provisions of s.72A.

S.72A of the Act is similar to but not identical with s.118A of the Industrial Relations Act 1988 (Cth) (as amended). As that Act does, it confers an unlimited discretion, save that the Full Bench must exercise that discretion within the confines of the Act and its requirements. That discretion is to determine whether an organisation should have the right to exclusively represent the industrial interests of employees employed in an enterprise or workplace.

The onus is on the applicant in any particular case to establish its case, bearing in mind that an organisation once registered under the Act has a right to represent the industrial interests of its members and its potential members. It is a right that should not be diminished or denied unless there is a strong reason for doing so, a reason that is related to the achievement of the objects of the Act (see Re Queensland Alumina Ltd [1991] 42 IR 304 at 321 (AIRC) per Munro J).

There was some argument about the effect of the section, and I therefore propose to examine it and construe it, reading it in the context of the whole of the Act, and giving the words of the section their ordinary and natural meaning. (If there is thereby created an ambiguity or absurdity then I will take a

different approach (see AEEFEU v Minister for Health 71 WAIG 2253 (IAC) and the authorities cited therein).

(1) An organisation or employer or the Minister has the right to apply to the Full Bench for an order that an organisation has the right, to the exclusion of another organisation or other organisations, to represent under the Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organisation (see s.72A(2)(a) of the Act). In other words, an order can be made which confers the right to represent certain employees or an organisation which does not have it and this may be done at the expense of an organisation which does.

(2) An application for an order under s.72A(2) is confined to one conferring an exclusive right to represent the industrial interests of employees employed in an enterprise who are eligible for membership of the applicant organisation. The order cannot apply to employees employed in an enterprise who are not eligible for membership of the applicant organisation.

(3) An organisation, for the purposes of s.72A of the Act, is an organisation of employees and is a narrower definition than "organisation" in s.7 of the Act.

(4) There is a third class of order which can be made under s.72A(2) of the Act. That is one which removes the right of an organisation to represent under the Act the industrial interests of certain employees in an enterprise when there is an existing right in that organisation to represent those employees.

(5) A s.72A order may be made where a right of representation exists because of an organisation's rules, or because of an existing s.72A order.

(6) There are a number of other conditions precedent to the making of an order which require some consideration.

(7) No order can be made unless it relates to "... employees employed in an enterprise". I refer to the various definitions of "enterprise". Firstly, an enterprise is a business or part of a business which is carried on by a single employer. The word "business" is notorious for taking its colour and its content from its surroundings; its meaning depends upon its context (see Re AIRC and Others; ex parte Australian Transport Officers Federation and Others [1990] 171 CLR 216 at 226 (HC) per Mason CJ, Gaudron and McHugh JJ).

In this case, it is clear that a business is any activity whether carried on for profit, fee or reward (or as the activity of a public authority) involving the creation, distribution, supply or provision of goods or services (see Wellington v Norwich Union Life Insurance Society Ltd [1991] 1 VR 333 at 335-336 (SC of Vic) per Nathan J and Australian Health Insurance Association Ltd v Esso Australia Pty Ltd 116 ALR 253 at 261 (FC FC)).

Definition 72A(1)(a) of "enterprise" refers to a business, then, as I have defined it, carried on by a single employer.

Definition 72A(1)(b) refers to a business or part of a business carried on by two or more employers either as a joint venture or a single enterprise.

Definition 72A(1)(c) refers to activities carried on by a public authority not a business, or part of those activities.

Definition 72A(1)(d) defines an enterprise to mean a single project, undertaking or place of work.

A "public authority" is defined in s.7 of the Act as follows—

> ""**public authority"** means the Governor in Executive Council, any Minister of the Crown in right of the State, the President of the Legislative Council or the Speaker of the Legislative Assembly or the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, as the case requires, under the *Parliamentary and Electorate Staff (Employment) Act 1992*, the Governor or his or her delegate under the *Governor's Establishment Act 1992*, State Government department, State trading concern, State instrumentality, State agency, or any public statutory body, corporate or unincorporate, established under a written law but does not include a municipality or regional council constituted under the *Local Government Act 1960*;"

An "employer" is defined in s.7 of the Act as follows—

> ""**employer"** includes, subject to section 7B —
>
> (a) persons, firms, companies and corporations; and
>
> (b) the Crown and any Minister of the Crown, or any public authority,
>
> employing one or more employees;"

An "employee" is defined in s.7 of the Act as follows—

> ""**employee"** means, subject to section 7B —
>
> (a) any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee;
>
> (b) any person whose usual status is that of an employee;
>
> (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
>
> (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if he is in all other respects an employee,
>
> but does not include any person engaged in domestic service in a private home unless —
>
> (e) more than 6 boarders or lodgers are therein received for pay or reward; or
>
> (f) the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged;"

(8) Accordingly, unless a business is being carried on by an employer or employers who are employing one or more employees, they are not employers within the meaning of the Act and within the meaning of s.72A, and are not conducting an enterprise. That is, of course, subject to definitions s.72A(1)(c) and (d).

In the case of definition s.72A(1)(c), all that are required are activities or part of the activities carried on by a public authority to constitute an enterprise.

Under s.72A(1)(d) all that is required to constitute an enterprise is a single project, undertaking or place of work.

Mr Nisbet conceded that orders could be made in anticipation of future events. However, there would be no power to make an order under s.72A of the Act unless it were established, on the balance of probabilities, that an enterprise as defined exists or will exist. There must also exist or be likely to exist in the foreseeable future a particular class or group of employees in relation to whom such an order can be made.

In the case of the PATHCENTRE, I am satisfied that an enterprise exists because the PATHCENTRE is an employer currently employing employees and intending to employ more employees. It is also a public authority in terms of the definition of enterprise contained in s.72A of the Act and s.7 of the

Act, which I have set out above. It also is carrying on a business, as I have defined it above.

I am also satisfied that the public hospital centred ("health services") services do exist as enterprises because they are businesses carried on in each case by a single employer, in some cases by two or more employers, and, further, they are activities carried on by public authorities. Those enterprises have changed or will, on the evidence, change within 12 months to become the integrated hospital and health services of which the Full Bench has heard evidence. Currently, they all employ employees in the new enterprise, or, alternatively, will employ such employees when they are transferred to the new enterprise of hospital centred health services.

I am therefore satisfied that, for the purposes of s.72A of the Act, enterprises exist as defined to enable us to make orders if all other facts or matters required to be established are established. I am also satisfied for that reason that the applications made were competent.

HSOA RULE COVERAGE AND CSA RULE COVERAGE

The relevant parts of the HSOA's constitution rule, rule 3, are sub-rules 3(1)(a), 3(1)(c), 3(1)(h) and 3(1)(j), and these read as follows—

"(1) The Union shall consist of workers engaged in Professional, Administrative, Technical, Supervisory or Clerical capacities including workers employed in any classification of work which at the 1st day of July, 1982, was covered by an Award or a deemed consent Award to which the union was a party, employed by—

(a) Any public or private hospital other than any hospital or institution established under the Mental Health Act, 1962.

Provided that those persons who are employed as Shift Engineers at Royal Perth Hospital shall not be eligible for membership of the Union.

(b) ...

(c) The Western Australian School of Nursing or any service ancillary to the practice of medicine including institutions or facilities solely or substantially engaged in providing Medical Laboratory services, Radiological services, Physiotherapy services, Occupational Therapy services, Speech Therapy services or Social Work services.

Provided that any person who is employed as an officer or temporary employee under and within the meaning of the Public Service Act, 1904, or who is determined by the Western Australian Industrial Commission to be a "government officer" shall not be eligible for membership of the Union.

Provided further that any person employed in Doctors' surgeries or any wholesale or retail distributing or manufacturing organisation shall not be eligible for membership of the Union.

Provided also that any person who is employed by the St. John Ambulance Association for the purpose of operating first aid and/or ambulance services shall not be eligible for membership of the Union.

(d) ...

(e) ...

(f) ...

(g) ...

(h) Dentists, provided that membership of the Union shall be limited to Dental Therapists.

(i) ...

(j) Any non-Government employer engaged primarily in health services, provided that membership of the Union shall be limited to Audiologists, Chiropodists, Clinical Psychologists, Dieticians, Occupational Therapists, Nucleographers, Physiotherapists, Psychologists, Social Workers, Speech Therapists and Welfare Officers, howsoever designated.

Provided further that an employee who is solely or substantially engaged in providing his services to other employees of his employer and who is eligible for membership as at the 30th April, 1985, of another registered State organization within the meaning of the Industrial Relations Act, 1979, shall not be eligible for membership of the Union under this paragraph.

Provided also that persons employed by the University of Western Australia or by the Western Australian Institute of Technology or by Murdoch University shall not be eligible for membership of the Union.

Any person who is eligible for membership in accordance with the registered rules of the Royal Australian Nursing Federation (Western Australian Branch) Industrial Union of Workers as at the 1st of August, 1966, shall not be eligible for membership of the Union.

..."

The relevant rule of the CSA is rule 6, and the relevant parts thereof are sub-rules 6(a)(1), 6(a)(3), 6(a)(5), 6(a)(6) and 6(a)(7), and those read as follows—

"(a) Membership shall be confined to any person who is:

(1) employed as an officer under and within the meaning of the Public Service Act, 1978-80; or

(2) ...

(3) otherwise employed in any of the established Branches of the Public Service, including State trading concerns, business undertakings and government institutions controlled by Boards; or

(4) ...

(5) employed by the Crown or by any Minister of the Crown in right of the State of Western Australia; or

(6) employed by any statutory body representing the State of Western Australia; or

(7) employed by any instrumentality or authority whether corporate or unincorporated acting under the control of or for or on behalf of or in the interest of the State of Western Australia; or

..."

It was submitted that the HSOA has existing coverage by reason of rule 3(1)(a) of its rules which confers constitutional coverage on PACTS employees employed by any public or private hospital other than any hospital or institution established under the Mental Health Act 1962-1976 (as amended).

It was submitted that, although the process has not been completed, the public hospital boards, constituted under s.15 of the Hospitals and Health Services Act, will be the employers in integrated health services and each employee of each health service will be employed by the board of a public hospital, and that will plainly be the case as I conclude.

It was submitted also that the HSOA has always had coverage of PACTS employees employed by hospital boards, and of a total potential industrial coverage of 6529 PACTS employees in health services, which are the subject of these applications, 2775 are on HSOA payroll deductions, while there are only 246 CSA members.

It is clear that no unions had any past industrial coverage of the PATHCENTRE because it is a completely new entity established under s.7B of the Hospitals and Health Services Act. The submission was that it could not be treated merely as a manifestation of the old combined laboratory services which it will completely supersede. It was submitted that the only reason that the CSA had been entitled to coverage in the past at all was because the employer had been the Health Department of Western Australia.

We received submissions as to the constitution rule coverage of both applicant organisations.

The interpretation of the rules of organisations is to be effected in the same way as with any other legal document (see R v Aird; ex parte AWU (op cit) (HC)).

If one commences by giving the words their ordinary meaning, then rule 3(1)(c) of the HSOA rules gives coverage over employees employed in the PATHCENTRE, because the PATHCENTRE is "an institution or facility solely or substantially engaged in providing medical laboratory services". That is the fact. That also provided a basis for coverage in the Sir Charles Gairdner Hospital laboratory. However, there are provisos to that rule, and that is important. In the PATHCENTRE the employees would not be officers or temporary employees "under and within the meaning of the Public Service Act, 1904" or under the Public Sector Management Act 1994 (as amended).

There is a determination of the type referred to in the second proviso to rule 3(1)(c) in order No 262 of 1967 (47 WAIG 318-319) which reads as follows (see George C's decision in WA Centre for Pathology and Medical Research v HSOA 75 WAIG 3052 at 3055)—

> "The Commission in Court Session doth hereby order and declare—
>
> That pursuant to the provisions of subsection (6) of section 11A of the Industrial Arbitration Act, 1912-1966, every person who is or is eligible to become a member of the Civil Service Association of Western Australia (Incorporated) and who is employed on an annual salary or in a position similar to that occupied by a person on an annual salary or who is otherwise employed in a position similar to that occupied by an officer or temporary employee under and within the meaning of the Public Service Act, 1904-1966 in any Government Department, State Trading Concern, State Instrumentality or State Agency named in Schedule A of this Order, is a Government Officer within the meaning of section 11A of the said Act, unless he is employed by an employer bound by an award made and in force or an industrial agreement registered and in force under the Industrial Arbitration Act 1912-1966, to which an industrial union of workers other than the Civil Service Association of Western Australia Incorporated is a party, in the callings which, on the 17th March, 1967, were mentioned in any such award or agreement.
>
> Dated at Perth this 17th day of March, 1967.
>
> By the Commission in Court Session,
>
> [L.S.] (Sgd) S.F. SCHNAARS,
> Commissioner."

Very detailed submissions were heard in WA Centre for Pathology and Medical Research v HSOA (op cit) by George C as to the meaning of the constitution rules of the two applicant organisations. That case involved an application by the HSOA to register the s.41 PATHCENTRE agreement. In those proceedings, the CSA was given leave to intervene on the question of constitutional coverage. The Commission there considered the constitution rule in relation to the coverage of the PATHCENTRE.

In 1966 the rules of the HSOA were amended to cover salaried officers employed in any public or private hospital or in any non-government medical ancillary service.

In 1967 the CSA was entitled to function as an industrial organisation, even though it was not registered as such, but it nonetheless applied for registration, in any event. The Commission, on 17 March 1967, ordered that the CSA be registered as an industrial union, and also made the declarations as to what employees were government officers pursuant to s.11A(6) of the Act, as the Act then provided. That declaration was made in the terms which I have set out above. At 47 WAIG 314 at 316 of its reasons for decision, the Commission in Court Session said, inter alia, this—

> "We will therefore direct the Association to amend its rules by altering the membership rule put before us on the 3rd March, 1967, to restrict the membership of the Association to workers not covered by an award or industrial agreement to which another union is a party."

In 1976, after the HSOA had re-drafted an application to alter its rules, the Registrar was directed by the Commission in Court Session to register an amendment to rule 3. Constitution of the registered rules of the HSOA in the form which still exists. It is plain, as the Commission observed in its reasons for decision in WA Centre for Pathology and Medical Research v HSOA (op cit) at page 3056, that while the Commission in Court Session appeared to be speaking of government officers in general terms when talking of their exclusion from the HSOA rules, the rules, as they were registered, and as they remain, exclude officers and temporary employees within the meaning of the Public Service Act 1904 and persons determined by the Commission to be "government officers". There is no doubt that the order made in 1967 prescribed a number of categories of employee to be "government officers" within the meaning of the proviso.

The HSOA has coverage of persons referred to in rule 3(1), including those referred to in rule 3(1)(c), in particular, subject to the provisos thereto. All of those persons employed or to be employed by the PATHCENTRE or employed or to be employed by the hospitals in the hospitals and health services integrated entities are eligible for membership of the HSOA, subject to the first proviso to rule 3(1)(c). None are or will be officers or temporary employees under and within the meaning of the Public Service Act 1904 or the Public Sector Management Act 1994 (as amended), so far as the evidence reveals.

However, the main question is whether those employees are government officers within the meaning of the first proviso to rule 3(1)(c). They are if they have been determined by the Western Australian Industrial Relations Commission to be so. They were so determined to be so in order No 262 of 1967 quoted above. In particular, will employees of the PATHCENTRE be employed by a State instrumentality or agency.

The future or present employees in the provision of "health services" in the integrated services managed or to be managed by public hospital boards are currently employed pursuant to an award to which another industrial union or organisation is a party, namely the HSOA, under the Public Hospitals Award. They are so employed. For those reasons, the HSOA has coverage of those employees. As to the PATHCENTRE, there is evidence before me that the employees or prospective employees are currently employed by an employer not bound by an award to which the CSA is a party.

I now turn to CSA coverage. If one looks at the words of rule 6 and gives them their ordinary meaning, both the PATHCENTRE and the boards of hospitals are separate entities who employ persons who are covered by rule 6(a)(3). That is because they are employed by State trading concerns and government institutions controlled by boards, and also by business undertakings controlled by boards. Those employees are also employed by instrumentalities and authorities, whether corporate or unincorporated, acting under the control of or for or on behalf of or in the interest of the State of Western Australia (see rule 6(a)(7)). They also clearly are or will be employed by a statutory authority representing the State of Western Australia in the case of both of the boards, of the public hospitals, and of the PATHCENTRE.

I am satisfied and find that the CSA has coverage of these employees. The relevance of such a finding I will come to later in my reasons.

It is the case, however, and I find, that the HSOA has no coverage of PACTS employees employed in the dental services, psychiatric services, public health services and the State Health Laboratories because its coverage is limited to public hospitals, although it has coverage of persons employed in any service ancillary to the practice of medicine, including institutions or facilities solely or substantially engaged in providing medical laboratory services.

CONCLUSIONS

ONE ORGANISATION OR TWO?

A question does arise, as submitted, as to whether there should be one organisation covering PACTS employees in the so-called new health services. One major submission was that one organisation should cover PACTS employees. It was submitted that a major consideration in deciding this question was the potential for demarcation disputes said to be evidenced by the CSA challenging the redesignation by the employer of employee positions as HSOA positions in the "health serv-

ices" before the Public Service Arbitrator. I have a great deal of difficulty with the proposition that the employer can "designate" the coverage of an employee organisation.

The history of "litigation" which I have referred to above is said to support a view that there is a potential for demarcation disputes. I prefer not to ascribe that risk to the activities of the CSA. The potential derives not from the activities of the CSA, but from the creation of the PATHCENTRE and from the "extra territorial" claims of the HSOA and the stance taken by those representing the PATHCENTRE. The HSOA has also been defending and advancing its position. This is particularly so in the case of the PATHCENTRE where also the prospective employers' representatives' negotiating tactics and the general uncertainty are contributing factors.

The Commission and the Full Bench in this matter is bound to discourage, so far as is practical, the overlapping of eligibility for membership of organisations of employers and employees as s.6(e) of the Act provides. In my opinion, given the history of these matters, the equity, good conscience and substantial merits of the case, together with the interest of the employers and employees, would be better served if there was no overlapping. I say that even though there is evidence that not one work hour has been lost through any dispute over demarcation. However, there has been overt rivalry over coverage of PATHCENTRE employees. The HSOA has purported to represent CSA members in obtaining a s.41 agreement when it represents only about one eighth of the employees in the public laboratory area.

Given the now apparent rivalry between the two applicants, the objects of the Act and the interests of the applicants, the employers, prospective employers and the members of the applicants would be best served by giving coverage and the certainty in industrial relations, which, to some extent, derives from such a decision to one of the applicants only. Indeed, given the evidence available, it is necessary in furtherance of s.6(e) of the Act and necessary in this case to resolve overlapping in both areas now. In relation to the PATHCENTRE, in particular, it is quite plain that the two organisations have now an incompatibility which did not exist when the laboratory services were conducted under the old scheme. Having said that, I wish to make it clear that overlapping will, in every case, not automatically lead to a s.72A order. Every application must be heard and determined on its merits. I should also add that each applicant urged upon us that the appropriate course was to award coverage to one organisation.

WHICH ORGANISATION SHOULD HAVE COVERAGE?

I have already observed that the provisions of s.72A of the Act give the Commission a wide discretion limited by the four corners of the Act to exclusively represent the industrial interests of employees employed in an enterprise. I would observe that it is not essential to establish constitutional coverage to be successful. However, that is an important factor. I derive assistance from the decision of Williams DP in CFMEU and Another v FIMEE and Another [1993] 50 IR 118 (AIRC), as well as from the Act itself and the evidence before the Full Bench in deciding those factors which are relevant to my consideration of these applications.

HOSPITALS AND HEALTH SERVICES—COVERAGE

I deal first with the question of coverage in the health industry so-called.

(1) CONSTITUTIONAL COVERAGE

In FIA and Others v Comalco Aluminium Co [1989] 30 IR 241 (AIRC) (FB), in an application under s.118 of the Industrial Relations Act 1988 (Cth) (as amended), existing coverage was held not to be a condition precedent to an order. Indeed, it was held that there were sound industrial reasons for granting to one union representation to cover the entire workforce in a "greenfields" establishment where there were no entrenched allegiances or established patterns. This is not such a case, but, in any event, s.72A of the Act clearly authorises the making of orders which exclude an organisation or organisations with existing constitutional coverage.

I have decided that there is coverage by the HSOA in the new integrated hospital and health services because there is employment in a public hospital and employment in services ancillary to medical practice.

As to the CSA, there is coverage of employees because these hospitals and health services are statutory authorities, etc, whose employees are subject to CSA coverage.

Accordingly, both organisations have coverage over all PACTS employees who are the subject of these applications in both hospital and health services.

It is true that the HSOA has existing coverage by reason of rule 3(1)(a) of its rules. It is true, too, that there is specific and longstanding coverage by the HSOA of persons employed by public hospital boards, inter alia.

(2) Now all employees of health services or hospital boards providing hospital services and what I might call ancillary health services are or will become the employees of hospital boards. That this process is not complete but that the process is in-train is clearly the case. On the other hand, those employees who have been engaged as PACTS employees in many areas, now subsumed into the employment of hospital boards, have been the subject, as public servants, of longstanding coverage by the CSA. They will no longer be employed by the Commissioner of Health.

There are 6529 PACTS employees in hospitals and health services. Those are the subject. 2775 are on HSOA payroll deductions, and only 234 are on CSA payroll deductions (on HSOA figures) and 246 on CSA figures. One notes that the CSA membership in areas which could now be described as hospital and health service areas is very small. It was strongly submitted that what was occurring was the devolution of Health Department services to the hospital boards. As I understand the submission, this meant that the hospital character of employment had therefore changed. I do not accept that. What will occur is that employees will now provide health services in conjunction with hospital boards and staff, subject to hospital administration. There is, however, because of this, an undeniable hospital character to the new enterprises. The preponderance of membership will remain in the actual hospital premises themselves if the current numbers are any indication. Thus, the new integrated services do and it would seem will continue to be provided by a majority of employees employed in the hospitals themselves, with a minority employed in the provision of the services outside the hospitals. Further, the employers will be hospital boards.

That the great preponderance of employee coverage and membership lies with the HSOA, and that there is a hospital base for the new services, with the hospital boards retaining control of the hospitals, but being given extended powers and responsibilities over all employees, and that the HSOA's is historically an organisation with PACTS employee coverage in public hospitals where its origins lie, all add up to a strong factor in favour of the HSOA application and stronger than the existing coverage which the constitutional rule confers on the CSA, also.

(3) EMPLOYER PREFERENCE

The employers were somewhat reticent about expressing any preference early on in the proceedings. However, towards the end, through Mr Serich, they expressed a strong preference for coverage by the HSOA. This was based on—

(a) The best reflection of past patterns of constitutional and industrial coverage.

(b) Their disapproval of the CSA's conduct.

(c) The employees' awards are more health industry accented awards.

(d) They also encourage mobility within the health service.

(e) Employer representatives were of the view that the broadbanding structures within the principal HSOA award were better suited to the health industry. The HSOA was better suited to accommodate different mixes of private/public activity.

The employer made it clear to the Full Bench that the employers favour orders giving the HSOA coverage over the integrated "health services" and PATHCENTRE, and the CSA should have coverage over employees of the Commissioner of Health in care public service areas.

I place some weight on the employer preference, as one is

bound to do, and take some account of those matters to which the Full Bench was referred.

However, the following considerations are significant. I am not of opinion that the CSA's conduct was so susceptible of criticism as to influence me a great deal, as I have already found and I hope made clear. There was not evidence of such a participation in private ventures in the hospital/health services area as to persuade me that the HSOA is clearly in a better position to accommodate a public/private sector venture. In any event, as I have already found, the expanded hospital board responsibilities, which is the most relevant part of the proposed restructuring, does not alter the clear fact that the hospital boards are still to be administered, controlled and funded by the government and are statutory authorities. Consistent with that, however, the HSOA, as was pressed upon the Full Bench, has a large base in and a substantial history and flavour of public hospital employment, cover and membership.

(4) THE ACTU DETERMINATION CONCERNING APPROPRIATE DEMARCATION

The Full Bench, in my opinion, is not bound to take note of demarcation determinations (see MEWU v Coflexip Asia Pacific Pty Ltd and Others 74 WAIG 1507 at 1509 (FB)). However, the ACTU has considered it appropriate as between the CSA's Federal counterpart, the CPSU, and the HSOA's affiliate, the HSUA, that the HSUA has principal industry union status in the health "area" relating to PACTS employees.

There are also the consent orders made under s.118A of the Industrial Relations Act 1988 (Cth) (as amended) in proceedings between the HSUA and the CPSU conferring coverage on PACTS employees in Western Australia on the HSUA. Importantly, the HSUA, however, is not identical in character to the HSOA which has 75% hospital employees amongst its membership. However, notwithstanding that the ACTU's decision is a relevant factor, it is only one of a number of factors, some of more weight to be taken into account in deciding these applications.

(5) ESTABLISHED PATTERN OF AWARD COVERAGE

There is an established pattern of award coverage of the majority of employees of hospital boards now said to be health service boards, under the HSOA award. The minority of the employees would have been employed under the Public Service Award 1992, because they were public servants. That is a strong relevant factor.

(6) INDUSTRIAL BEHAVIOUR OF THE APPLICANTS

I have already referred to this. The HSOA unilaterally purported to represent members of the CSA and over whom the CSA had coverage in relation to the PATHCENTRE, which was a provocative act. Further, the employers' "negotiating tactics" were not conducive to co-operation.

The main consideration is, however, that little time has been lost from work as a result of demarcation problems, and there is no evidence of any real disruptive relationship. In the case of the "health services", there has been no evidence of disputation or loss of work time. In the combined laboratories, the evidence was that HSOA and CSA members got on well together. Generally speaking, each applicant has a history lacking in disruptiveness, in this area, in particular.

(7) WHETHER THE ORDER OR ORDERS WOULD ASSIST IN REDUCING THE NUMBER OR ORGANISATIONS IN AN INDUSTRY OR ENTERPRISE

The evidence was, and I accept, that at least 12 and probably more organisations have coverage of employees in the hospital/health service area. However, in the PACTS area the number of organisations covering members would be reduced by one, because there are only two organisations with PACTS employee coverage, namely the CSA and the HSOA. It would eliminate overlapping, where it is very much practicable to do so, to confer coverage on one organisation, and, in particular, because of its large majority coverage, the HSOA without making inroads into an area of substantial CSA coverage.

(8) PREFERENCE OF EMPLOYEES CONCERNED

There was no evidence from any HSOA member as to his or her preference as to coverage. There was evidence from a number of CSA members who were all firmly of the view that the CSA should remain the organisation representing them and citing their reasons why, including the opinion that the CSA is a leader in the field and the HSOA is not.

Something was sought to be made of the evidence of two members of the CSA in relation to the PATHCENTRE who said that were the HSOA given coverage they would join it. However, that was not a preference for the CSA, but statements that they would join the HSOA were they unable to join the CSA. Employee preference is very much a relevant factor.

(9) THE TERMS OF ANY EXISTING AGREEMENTS OR UNDERTAKINGS IN THE AREA

There is no existing agreement or undertaking as to membership or coverage in the hospital/health area. There is the consent s.118A order in favour of the HSUA, but that is neither binding or conclusive in these proceedings, not the least because it was made by consent by an affiliated organisation which has, to some extent, different characteristics from the HSOA. The Full Bench is required to decide this matter on the evidence about a range of relevant considerations.

(10) THE EFFECT OF THE ORDER OR ORDERS SOUGHT ON EMPLOYER OPERATIONS, WORK PRACTICES, AWARD STRUCTURES AND THE POTENTIAL FOR DEMARCATION DISPUTES

There is no evidence of any effect on award structures. There is evidence that the HSOA award is not as beneficial as the CSA award, but that does not relate to structures. If the orders are made, there will be one award, the Public Hospitals Award, applying to all PACTS employees and not two awards.

There is no evidence of any potential detrimental effect on work practices, nor is there any evidence of any real potential for demarcation disputes in this area. Indeed, one can properly conclude that if only one organisation is to cover PACTS employees that there is no such potential. I do so conclude.

(11) WHETHER THE ORDER OR ORDERS SOUGHT WOULD ACHIEVE OR CONTRIBUTE TO THE ACHIEVEMENT OF ANY OF THE OBJECTS OF THE ACT

The objects of the Act are set out in s.6 of the Act. To make the orders sought by one organisation or another would not necessarily promote goodwill, but would not reduce goodwill. However, it might be said that goodwill would be promoted from the existence of employer preference for the HSOA if the HSOA application were granted, at least initially. One cannot necessarily say that long-term that would be the case with the HSOA or any other organisation.

Another relevant object is that part of object 6(e) of the Act which enjoins the Commission to discourage, so far as practicable, overlapping of eligibility for membership. If the orders were made on either applications then the other organisation would be excluded from coverage and there would be no overlapping coverage in the area, particularly if the Full Bench were to refer the matter to the President to make orders under s.72A(6), (7) and (8) of the Act.

As to s.6(g), that object would be advanced by making orders favouring either applicant because of their connections with the CPSU and the HSUA respectively. There are no other objects which might be achieved or their achievement contributed to by orders of one type or another.

(12) ABILITY TO SERVICE MEMBERS IN THE HEALTH INDUSTRY, PAST RECORD AND CONDUCT OF ORGANISATIONS

A substantial amount of evidence was adduced on this point. The HSOA's case was that it was a specialist health industry organisation because it had 3998 members, with 75% employed in the public hospital area and 25% in private hospitals, nursing homes and charitable institutions. Thus, it was better able to service members employed in the public hospital area.

There was no evidence that either organisation did not adequately service its members, and would continue to do so in the foreseeable future. There was, as I have said, some evidence of loss in CSA membership and some evidence of loss in HSOA membership.

The CSA is capable of providing adequate resources in the health area. Both applicants have experience in covering persons in the health industry area and both can and do receive assistance from the CPSU and the HSUA respectively. Both

cover numbers of PACTS employees. The HSOA may cover more PACTS employees than the CSA. On the other hand, the CSA is an organisation which covers "government officers", which the HSOA members are in the broad sense.

There was substantial evidence in this area which I have considered, and that evidence was summarised for both applicants in their counsels' submissions. However, the evidence for either was not significant enough for me to find for one organisation or the other over the other on that basis alone.

(13) IMPACT OF ORDERS ON THE TWO ORGANISATIONS

It was submitted on behalf of the HSOA that granting orders on the application of the CSA would effectively wipe out the HSOA. It was submitted in reply that that should not prevent the Commission making orders in favour of the CSA. After all, it was submitted, the HSOA had "started it". On the other hand, granting orders on the applications of the HSOA would make little inroad into overall CSA membership.

If s.26 of the Act requires, upon a consideration of the evidence (including the evidence that the HSOA will be eliminated) and the law, that an order be made in favour of the CSA (or the HSOA), then it is the Full Bench's duty to make the order sought.

(14) OTHER RELEVANT FACTORS

The Commission is required 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 (see s.26(1)(c) of the Act). The persons immediately concerned are the employers who are legal persons (see s.5 of the Interpretation Act 1984 (as amended) in relation to the hospital boards, the applicants, their members and the community). I take those into account in deciding this matter.

In conclusion, I take the abovementioned factors and all of the evidence, both oral and documentary, and all of the submissions into account. The new integrated services provided by and under the administration of hospital boards still retain a substantial public hospital flavour; both organisations have coverage of the employees, but the majority are and will remain employed in the hospitals themselves; those persons covered by the CSA are very few comparatively and would cease to be CSA members; the HSOA has a longstanding coverage of public hospital employees both by constitution and award; it is a relevant and a strong consideration that one organisation cover the PACTS employees to prevent overlapping for the reasons which I have explained, notwithstanding CSA expressed employee preference and the employers have expressed a strong preference for HSOA coverage in the industry, and also the number of organisations covering PACTS employees would be reduced to one. There is no evidence of any foreseeable serious disputation between the HSOA and the employers, and the history of industrial relations in the past seems to have been good. The objects of the Act, to which I have referred, will also be advanced, and the merits of the applications lie with the HSOA, that being where the equity, good conscience and substantial merits of the case take me (see s.26(1)(a) and (c) of the Act). I would make orders under s.72A of the Act, accordingly in favour of the HSOA. I would dismiss the CSA's application insofar as it relates to applications to cover persons employed by the integrated "hospital and health" services. I would hear further submissions as to whether and what enterprise and what names should be identified in any order made.

Since the CSA rules, at least, require alteration in this regard, and for clarity's sake, the HSOA's rules may, I would refer the rules of the organisations to the President under s.72A(6) of the Act.

THE PATHCENTRE

(1) THE PATHCENTRE CONSTITUTIONAL COVERAGE

I have already determined that both applicants would have coverage of the PACTS employees of the PATHCENTRE. There was dual coverage of the pre-existing components of the PATHCENTRE with a preponderance of the members being CSA members. That coverage and membership has been longstanding. In the case of the HSOA, it has been slight and presently it is about one eighth, while the CSA coverage remains very substantial. True it is that the CSA members, or those eligible to be CSA members, will cease to be public servants. However, they will still remain eligible. The agency becomes a statutory authority and will remain as it always has, connected with but not part of the hospital industry, nor is it part of the health industry in the same manner as is the work of health professionals in the caring area. It is ancillary in some respects to the hospital and health services industry, but not entirely.

I do not attach a great deal of weight to the directions to the PATHCENTRE to compete, or the fact that it is enabled to enter into enterprises with private sector organisations. It remains a government authority. Further, the HSOA has not been able to implement its coverage in the private pathology field, although that is not vital, except that its links to private pathology coverage in a practical sense is non-existent.

There was no evidence either that the PATHCENTRE's essential character as a substantial recipient and user of government funding would cease. There is a long history of preponderant CSA membership and relatively insignificant HSOA membership in the public sector laboratory area in this State. The PATHCENTRE is an entity which resulted from the unification of the present component parts in the public sector laboratory area into one public sector laboratory which is an entity properly described and describable as a statutory authority. Those are significant relevant factors weighing in favour of the CSA.

(2) The employees will become employees of a statutory authority providing health services as its pre-existing component parts did. That will not alter the fact that the employees will retain the same PACTS duties in an enterprise doing very much the same thing.

I was not persuaded on the evidence that the objects of the PATHCENTRE meant that its competition with and collaboration with private sector bodies would alter its nature as a public authority substantially in the near future, or, indeed, how much it could or would pursue those objects in the foreseeable future. In any event, its nature as a statutory authority could not be altered, particularly, as I understand will be the case, that it will carry out s.247G responsibilities.

(3) EMPLOYER PREFERENCE

My comments under heading (3) in relation to the hospital and health industry apply. I am not disposed to place great weight on this factor, in particular, because of my finding that difficulties arose substantially because of the attitude of those representing the PATHCENTRE, and because of the actions of the HSOA in unilaterally purporting to represent the majority of persons working at the PATHCENTRE whom the CSA presently covers, as well as HSOA covered employees. The HSOA attempted to defacto cover the majority and not the minority of employees. It created a climate of discord. I placed therefore little weight on the employers' preference for the HSOA in relation to the PATHCENTRE.

(4) THE ACTU DETERMINATION CONCERNING APPROPRIATE DEMARCATION

I adopt my findings and comments made above in relation to hospital and health service enterprises under this heading.

(5) AWARD COVERAGE

In the public laboratory service area there is a history of dual award coverage by the two applicants with preponderance of coverage with the CSA. However, that was before difficulties arose in relation to membership coverage with the inception of the PATHCENTRE.

(6) INDUSTRIAL BEHAVIOUR OF THE APPLICANTS

There was rivalry between the HSOA and the CSA, as I have found. Those representing the PATHCENTRE and the PATHCENTRE, as I have observed, clearly favoured and do favour the HSOA. The CSA was unfortunately frustrated in its efforts to conduct fruitful negotiations in relation to the PATHCENTRE and the prospective employees thereof with those representing the PATHCENTRE. The HSOA, on the

other hand, intruded into areas of CSA coverage and this caused an understandable reaction. I do not therefore criticise the conduct of the CSA, although, as I have said, I think some criticism should be made of the conduct of the HSOA and of those representing the PATHCENTRE.

(7) WHETHER THE ORDER OR ORDERS WOULD ASSIST IN REDUCING THE NUMBER OR ORGANISATIONS IN AN INDUSTRY OR ENTERPRISE

Clearly, orders made in favour of either applicant would reduce the number of organisations covering PACTS employees from two to one and that is significant and advances the object in s.6(e) of the Act. In terms of that object of the Act, it is now practical and the evidence exists to justify an order which will prevent overlapping against a background of disputation as to coverage. As a necessary corollary, it would reduce the number of industrial awards or agreements necessary to regulate employment.

(8) PREFERENCE OF EMPLOYEES CONCERNED

I adopt what I said above. There was a clear preference in evidence for the CSA. No evidence was called of any preference for the HSOA.

The s.41 agreement was authorised in a ballot by a very small percentage of prospective employees of the PATHCENTRE. It is noteworthy that there was a very small vote in favour of the agreement being entered into.

(9) THE TERMS OF ANY EXISTING AGREEMENTS OR UNDERTAKINGS IN THE AREA

I adopt what I said above in relation to the hospital and health services entities, and add that the s.41 agreement referred to in these proceedings was entered into by the HSOA on behalf of the employees, the majority of whom were not covered by or members of the HSOA. The agreement was entered into in circumstances which lacked, in that sense, "legitimacy". There is no evidence but that the CSA is capable of continuing to represent employees in this area who are its members and who may later become its members, and to negotiate with those representing the PATHCENTRE as it has in the past. Whether then the employment, terms and conditions of these persons are regulated by a Federal award, a State award or amendment to a State award or a s.41 agreement is a matter for the CSA and for the employer, and last, but not least, the employees.

(10) THE EFFECT OF THE ORDER OR ORDERS SOUGHT ON EMPLOYER OPERATIONS, WORK PRACTICES, AWARD STRUCTURES AND THE POTENTIAL FOR DEMARCATION DISPUTES

I adopt what I said above. In a situation where the HSOA attempted to de facto represent CSA members in advance, an order for one union to represent all employees would resolve the demarcation differences which occurred.

The equity to some extent lies with preventing unauthorised representation of members which can clearly be and was a source of dispute.

If one organisation is given coverage there will be no scope for demarcation disputes. The CSA award is already operating in the area over employees performing the same tasks, and the variation of the GOSAC award, if that is necessary, to cover employees should not, on the evidence, present problems, nor will CSA broadbanding which already applies to the majority of employees in the public laboratory area, who are covered by the CSA.

The s.41 agreement which was entered into was entered into prematurely, having regard to the existence of these proceedings and the pre-existing knowledge of them which the employer and the applicants had.

(11) WHETHER THE ORDER OR ORDERS SOUGHT WOULD ACHIEVE ANY OF THE OBJECTS OF THE ACT

S.6(e) of the Act will undoubtedly be advanced by making an order for one organisation to represent employees. I think that I have dealt with that aspect in some detail above. I adopt what I said above in relation to the hospital and health service enterprises when I was referring to s.6(g) of the Act.

(12) ABILITY TO SERVICE MEMBERS IN THE HEALTH INDUSTRY, PAST RECORD AND CONDUCT OF ORGANISATIONS

I adopt what I said above.

(13) IMPACT OF ORDERS ON THE TWO ORGANISATIONS

If an order is made granting the CSA application and dismissing the HSOA applications, it will be an order which causes little disadvantage to the HSOA and makes little inroad into their membership since the HSOA has and has had minority coverage in the public laboratory area. That has been the case for some time. Such an order would recognise, in fact, the industrial reality of coverage. Such an order would recognise CSA coverage preferred by witnesses in an area of longstanding constitutional and actual coverage only indirectly connected to the public hospital and health areas.

(14) OTHER RELEVANT FACTORS

(a) S.247G OF THE HEALTH ACT 1911 (AS AMENDED)

There is a matter to which it is necessary to advert. By virtue of s.247G of the Health Act 1911 (as amended), the text of which I have set out above, there is no authority in law for the PATHCENTRE to perform the functions which the Health Laboratory Service, created under s.247G, is to perform. The PATHCENTRE is a duly created agency under the Hospitals and Health Services Act. However, it may not, as a matter of law, perform what a health service laboratory under s.247G is bound to perform. That laboratory must be part of the department and the PATHCENTRE is not. That laboratory is required to meet the requirements of the department, the public hospital service and other bodies and persons. The PATHCENTRE is not. The Minister may, however, enter into arrangements with any hospital, university or other body or person (which the PATHCENTRE is) with respect to the supply of laboratory and other related services, either to the health laboratory or at the request of any other person, by the health laboratory. However, those services may only be provided by the State Health Laboratories primarily, and its officers and staff must be appointed subject to the Public Sector Management Act 1994 (as amended) over whom the CSA has coverage. However, if the PATHCENTRE itself were to provide services under s.247G(3) of the Health Act 1911 (as amended), as it seems that it will do, then it will not be functioning unlawfully.

(b) WAS THE HSOA APPLICATION PREMATURE AND THEREFORE INCOMPETENT?

The application by the HSOA for an order in relation to the PATHCENTRE was made on 7 March 1995 before it came into being on 10 April 1995. However, it might be said that at that time it was a project and therefore an enterprise as defined. The application was therefore competent. The CSA application was plainly competent.

SUMMARY

I take into account all of the above evidence, all of the submissions and the relevant considerations to which I have referred above and what s.26(1)(a) and (c) of the Act requires. In this case, the longstanding coverage of the majority of PACTS employees who will be employed by an authority which will not substantially change its functions, and which is a statutory authority, operating as it always has, somewhat differently from those in the hospital area proper, is very significant. The PATHCENTRE is, in part, the direct lineal descendant of the State Health Laboratories created under s.247G of the Health Act 1911 (as amended). All of this is supported by employee preference, by a relatively small customary HSOA presence and by no expressed HSOA preference. Above all, it remains an area within CSA coverage and one which has been the subject of longstanding majority CSA coverage and membership. Further, the CSA, like the HSOA, is an organisation with whom those representing the PATHCENTRE have had a longstanding relationship, and one, until recently, which has no history of disputation, on the evidence. S.6(e) of the Act supports the conclusion I have reached in relation to discouraging overlapping. The HSOA cannot derive comfort from its coverage of private pathology employees because in any practical sense it has not acted upon its coverage.

Further, the PATHCENTRE will not so significantly change

its functions, nor significantly lose the character derived from its three predecessors.

I would add that there is no evidence which suggests that the CSA should be granted a s.72A order in relation to those private hospitals or similar entities referred to in its application. I would therefore dismiss that part of the application.

As to application No 329 of 1995, an application by the HSOA for coverage of existing employees of the "public laboratory services", that application is not made out on the merits. Indeed, PACTS employees employed by or in the PATHCENTRE are covered by the CSA application and the merits require that they be subject to the s.72A order in favour of the CSA.

In the circumstances, and for all of the reasons set out above, I would make the orders in favour of the CSA in relation to the PATHCENTRE and would dismiss the HSOA application in that respect.

I would otherwise dismiss the applications.

I would also make orders to refer the rules of both organisations to the President under s.72A(6) of the Act, I being satisfied, having regard to what I said above, that the rules of the organisations need to be altered. I would issue a Minute of Proposed Order accordingly. I would invite the applicants to submit drafts of any detailed orders which they submit should be made to reflect these reasons within 14 days of the date hereof.

BEECH C: I have read in advance the reasons for decision of His Honour the President. I respectfully agree with the conclusions he has reached and have nothing to add.

GIFFORD C: I have had the opportunity of reading the Reasons for Decision of His Honour the President and agree with them, except, regretfully, in two respects. These are, firstly, as to his conclusions in respect of the Hospital Salaried Officers Association of Western Australia (Union of Workers) ("HSOA") objection to Mr Nisbet appearing in the proceedings and secondly, as to his conclusions concerning the W.A. Centre for Pathology and Medical Research ("the PathCentre"). My reasons on these matters follow.

Appearance of Mr Nisbet

In the context of the authority of Mallesons Stephen Jaques *v.* KPMG Peat Marwick (1990) 4 WAR 357 (SC of WA), the question to be considered in the case of Mr Nisbet's appearance was whether there was a 'real and sensible possibility' of his having obtained confidential and privileged information, during the period when he acted for the HSOA, over the course of 1979 to 1986, such as to benefit from that, in terms of representing the interests of his present client, the Civil Service Association of Western Australia Incorporated ("CSA").

Having heard the respective arguments of the parties, I formed the view that such a real and sensible possibility existed and that therefore the leave given as to his appearance, ought to have been withdrawn.

Whilst it is recognised that the HSOA were unable to detail, in specific terms, what the nature of that confidential and privileged information was, it is sufficiently open to conclude that Mr Nisbet would have been privy to the HSOA's plans and strategies, in respect of their constitutional rule, and to the consequences which would potentially flow from applications succeeding or failing, from the standpoint of membership or other such matters. This may have included matters which potentially impacted upon the CSA.

The period of time since he left the firm of Ilbery Barblett, namely some seven or eight years is not a sufficient period, in my respectful view, for senior counsel, with all the intellectual skills that are associated with such a position, to maintain that there was no or little recollection of events, discussions and the like. That is conceded as to detail, but not necessarily in relation to the formulating of strategies, plans and matters of that nature.

I take the issue no further than that. The only qualification I attach to this conclusion is that I find it most surprising that the application was made by the HSOA at such a late stage in proceedings, when it can be entirely reasonably maintained, in my view, that preparation for such a large case as this would have revealed Mr Nisbet's correspondence on files, much earlier.

PathCentre

His Honour, in his findings of fact concerning the PathCentre has outlined the structure, form and objectives of the PathCentre and its predecessor, all of which I adopt.

It is to be noted in addition however, that the PathCentre, in being established as a new entity, namely as an agency, under the control of a Board of Management, was intended to be operated on a commercial basis, with a progressive opening up to competition. In this respect, the Chief Executive Officer of the PathCentre, Dr Shilkin stated, in a Bulletin following the first Board meeting on 3 May 1995 that:

> "...PathCentre is a commercialised organisation. It is not privatised. PathCentre remains in the public sector although it is in a category within that sector that renders it outside the public service, a distinction that gives PathCentre some freedoms..."

On the basis of evidence and submissions led in these proceedings, it was difficult to ascertain whether the objectives spoken of, were in the process of being implemented. That conceded, the objective was nevertheless one which was clearly acknowledged, and as such, it is reasonable to imply that it will in time be implemented, and that ultimately it will be competing, subject to its obligations in a number of specialist areas, with the private sector.

The potential for a significantly different entity thus exists. It is the impact this has and will have upon the employment status of employees that is relevant to these proceedings.

S.72A Considerations re PathCentre

The factors relied upon by His Honour, the President to assess the merits of the arguments enable, in my view, a proper assessment of the relevant considerations in determining the appropriateness of extending rights of exclusive representation to one particular applicant union organisation or the other.

Additionally, in my view, it is open for some consideration to be given to the likely circumstances arising in the immediate future, as a s.72A determination is after all intended to secure a preferred form of union organisational representation, for the future. Such a consideration however, cannot be speculative, but must be able to be reasonably implied from the evidence led in the proceedings. This is especially the case where one is dealing with a situation, as in the present case, which is not at all static.

Constitutional Coverage

At the outset, it is accepted that dual coverage of the pathology employees in question by both union organisations, still exists notwithstanding the creation of the new entity, the PathCentre. The issue of particular significance in my view, is that the employees who formerly were employees of the State Health Laboratories and the University of Western Australia, are now no longer public servants, with a connection to the Health Department. That connection has been broken and that particular status is no longer available within the new entity. Such status is also different from that of similar employees employed by any of the teaching hospitals. The PathCentre employees are and will be agency employees, albeit that the agency is a public one, but operated (ultimately) along commercial lines.

Of the two comparisons, in my view, the one which is the more complementary is that with the hospital employees, and in particular with those employees who are engaged in pathology laboratories in all of the other teaching hospitals. Not only can they be seen as complementary, but in terms of size, they represent a group, albeit spread over a number of sites, comparable to that of the former employees of the State Health Laboratories. Such employees of course are all entitled to be covered by the HSOA. In addition, the coverage by the HSOA extends to the private pathology sector, which is influential in terms of its size. All of these matters are of significance in the context of these proceedings.

Employer Preference

Whilst at the outset of proceedings, the representative of the PathCentre was not inclined to state a preference toward one or other of the applicant union organisations, that posi-

tion changed by the conclusion of proceedings, in relation to the PathCentre, when a clear preference towards the HSOA was expressed. By that stage, in fact, such preference had been manifest in their preparedness to enter into a s.41 enterprise agreement with the HSOA, to the exclusion of any form of industrial coverage with the CSA.

There is no doubt that at the outset of the PathCentre's operation there was a desire on their part to engage their employees upon the terms of a collective workplace agreement. That course of action met with direct opposition from the HSOA, who set out to persuade the PathCentre that a preferable course of industrial coverage was a s.41 enterprise agreement. The PathCentre were prepared to review their position however, and negotiated upon such an agreement, with the aim, it seems, of securing certain concessions from the HSOA, when compared with the terms of the award previously in place, for HSOA employees. That fact no doubt made it a sufficiently beneficial course for them, to warrant the discontinuance of their preferred option. For the HSOA, it represented a less than ideal outcome, but it did mean, on the other hand, that they maintained a representational role, which under a collective workplace agreement option, they would not have had.

The PathCentre, it seems, had no interest in the CSA's position of securing PathCentre respondency, to the formerly existing award covering CSA employees.

The basis of the PathCentre's expression of preference was not canvassed in detail. It is open to infer however, that they saw in the HSOA, an organisation willing to participate in the enterprise bargaining process, being the preferred process in contemporary industrial relations; and indeed, the one encouraged by this Commission. The negotiation process of such an enterprise agreement, conventionally at least, necessitates positives and negatives for both parties. In the instant negotiation however, the PathCentre was in a strong position to secure a collective workplace agreement, having been established as a new entity, able to engage employees afresh. It seems to me that the HSOA perceived this and further perceived that to persuade the PathCentre into an alternative process, of an enterprise agreement, inevitably meant concession on their part. The HSOA thus adopted a strategy that, in the interests of their members, was industrially sensible and pragmatic.

The CSA on the other hand demonstrated no such direction. Their focus was solely upon securing the PathCentre's respondency to their applicable award, notwithstanding that the PathCentre was now an agency.

It is open to conclude that the PathCentre would have weighed these considerations in the forming of their view as to preference.

In so doing, they would have realised they had committed themselves to an ongoing relationship with a union organisation, subject of course to the outcome in these s.72A proceedings. Such a view would thus have to be taken as a considered one, and not necessarily conditioned by the degree of conflict or co-operation they were receiving from one or the other union. This being the case, especially in the context of contemporary employer/union relationships being gauged in terms of a preference to secure enterprise agreements as the outcome for progressing terms and conditions of employment, and work practices, serves to illustrate the desirability of attaching considerable weight to this factor, in the overall assessment of exclusive union representation.

ACTU Determination re: Demarcation

It is acknowledged that the Federally registered union, the Health Services Union of Australia ("HSUA"), to which the HSOA is affiliated, has been granted, by the ACTU, as part of its demarcation determinations, what is known as 'principal industry union status' in the health care industry concerning PACTS employees. In addition, a s.118A consent Order of the Australian Commission has issued, confirming the HSUA's exclusive coverage of PACTS employees in Western Australia.

Although arrangements at a Federal level are not determinative of arrangements at a State level, the fact that these demarcation arrangements exist, is a matter of some weight, in the overall assessment.

Pattern of Award Coverage

No award of course applies to the PathCentre. It is the case however, that both applicant organisations were party to current awards covering employees in the respective laboratories in respect of which each had coverage.

This element is not one of particular significance in the overall assessment.

Industrial Behaviour

I have already referred to the conduct of the union organisations, in the context of the action taken by both in endeavouring to secure industrial coverage at the PathCentre and the implications this had upon the formulation of the PathCentre's expressed preference. There was strong criticism by the CSA against the HSOA, on account of the latter having entered into a s.41 enterprise agreement, which not only embraced HSOA members, but also CSA members. This is defended on the basis that there was a critical need for some form of industrial coverage to be secured and that the s.41 agreement was the only realistic option open to secure that coverage. More particularly, this was what the HSOA members within the PathCentre (or its predecessor) instructed the HSOA officials to do. It was however, to be the subject of a ballot of all members, but the CSA advised its members not to participate in the ballot. As a consequence the ballot only actually represented the views of the HSOA members.

In terms of the usual processes of enterprise bargaining, it is clear that the views of all of the members, as to the entering into of a s.41 agreement and as to its terms ought, somehow, to have been obtained, in consequence of the HSOA intending to embrace all employees by the agreement. Some criticism is due to them, in not having obtained those instructions. This criticism is tempered to some degree however, out of consideration of countervailing factors, namely the need to proceed with the finalisation of negotiations and with the registration process, to ensure that some industrial coverage be in place at the time of the engagement of employees, or to face the possibility of having the momentum of the agreement option, lost. In addition, there was the total opposition by the CSA to the whole process.

There is the implication that the HSOA's actions were in some respects motivated by a desire to improve their position at the PathCentre, with the instant proceedings in mind. Whilst this is denied, and that denial is accepted by me, it is to be borne in mind that on the other hand the CSA's conduct, in terms of taking account of any implication their action may have had on these proceedings, was proper in every respect.

When regard is had to the developments in what became known as the PathCentre dispute, over the course of 1995, it is clear that both unions expended considerable amounts of time and energy to pursue their respective positions. Although there was at least two stop-work meetings called by the CSA there is no evidence that these had any deleterious effect upon the PathCentre. To the credit of both union organisations therefore, their hard-fought contest never impacted upon the services provided, and no-one in the community suffered as a result.

There is a deal at stake for both organisations, in these applications. Of a potential total workforce of about 480 (although once recruitment is completed, it is likely to be somewhat less than that), the CSA has about 350 members and the HSOA about 50 members. Thus, the potential gain, for the HSOA, of a successful application, would be most significant, whereas the potential gain for the CSA would be relatively marginal. The potential loss, on the other hand would be the corollary in each case.

The behaviour of the parties is a significant factor in the overall assessment to be carried out.

Reduction of Number of Organisations

The outcome of proceedings would enable PACTS employees within the PathCentre to be represented by only one union organisation. The benefits of this are obvious, so some weight must be attributed to it.

Preference of Employees

Central to this question is the survey conducted by the CSA of its health sector members, as to whether they wished to

remain a member of the CSA and not join the HSOA. Notwithstanding that a follow-up request was made after an initial advice to members, the response level to the survey would have to be described as very satisfactory. The overall conclusion was overwhelming, namely to the effect that members wished to retain their CSA membership. Indeed, there were even some strong protestations against the HSOA.

The HSOA argue that the survey ought to be treated as valueless because of the premise upon which the response was sought, namely a threat to their employment conditions (by the HSOA).

Whilst I accept that the use of such language could be instrumental in heightening the number of responses, I do not consider that the actual response can be discounted. It is open therefore, in my view, to conclude that CSA members at the PathCentre (even though the survey was much wider than them) were strongly supportive of their union, the CSA.

The HSOA, unfortunately, provided no similar survey information in these proceedings, to enable a proper comparison to be made. The membership's response to the creation of a s.41 agreement however, may, by implication, provide some indication. Certainly, there is no evidence of dissatisfaction amongst HSOA members of the action taken by them, in the course of the PathCentre dispute.

It follows in my view, that considerable weight has to be attributed to the CSA being strongly supported by their members. This is not to say however, that the HSOA were not supported by their members; but it can be put no higher than that.

Terms of Agreements or Undertakings

This is not a relevant factor in my view.

Employer Operations, Work Practices etc. and Demarcation

The only relevant factor in this respect concerns demarcation. It is certainly the case that the services of the PathCentre (or its predecessor), were not effected by the contest between the two union organisations over representation. Whether that would have been the case, had these proceedings not been instituted, is difficult to predict, but it can be observed that the level of acrimony that had built up between the two organisations by the middle of 1995, could possibly have spilled over into industrial action. The fact is however, that both organisations seek a resolution of the contest, effectively by the removal of the previous demarcation, by the grant of exclusive representation. For this reason alone, the Commission must proceed to a finalisation of these applications, but in the knowledge that the provision of services to the community have not been effected by the dispute.

Objects of the Act

It is obvious that, in issuing a s.72A Order in these proceedings, one way or the other, the Commission would be acting to remove the effect of overlapping constitution rules. In this way, object (g) of the Act would be fully accorded with.

Ability to Service Members

To begin with, the HSOA can rightly claim to being the specialist health care industry union representing the interests of PACTS employees. A similar claim can legitimately be made in respect of its Federal affiliate, the HSUA, although of course their coverage extends well beyond PACTS employees.

The CSA on the other hand have a separate team, or division as one of a number of such teams or divisions, within the union, which embraces health and community services.

The HSOA with an annual revenue of over $300,000, employ five professional and industrial staff, together with the Secretary. The CSA health team, in respect of whom annual revenue of about $80,000 is allocated, employ one industrial officer, and share the services of the Manager, and the Secretary. When regard is had to the membership numbers of nearly 4,000 and about 1,690 respectively, it can be seen that the staff/membership ratios, tend to favour the HSOA.

As to the quality of the representation, no significant differences are ascertainable, subject perhaps, in respect of the capacities observed above, in engaging in strategic thinking. Certainly, from all of the evidence which the Commission heard from the officials and officers, the competency of no-one could be called into question.

In an overall sense however, the specialist nature of the representation provided by the HSOA and the level of their staff, demonstrates the capacity for a more beneficial service to be able to be provided to their members. This is a matter to which significant weight ought to be given in the overall assessment.

It is the case that both unions are suffering a revenue shortfall due to reductions in membership levels, but there is no suggestion, in either case, that this will impact in any significant way upon the level of services provided.

Impact of Orders

The impact of issuing a s.72A Order will obviously deleteriously effect the union to whom the Order is not directed. For the HSOA to lose 50 members, in the context of a membership of nearly 4,000 ought not seriously effect that union. Broadly, the same can be said in respect of the CSA, who could lose 350 members, in the context of membership of just over 20,000. Accordingly, this is not a matter to which particular weight ought to be given.

Conclusion re: PathCentre

In determining which union organisation should be the recipient of a s.72A Order in respect of the PathCentre, I have focused in particular upon matters of constitution rule, employer preference, employee preference, industrial behaviour and ability to service members, in the context of the role of the PathCentre itself.

With respect to the constitution rule matter, it is clear that the creation of a new agency, known as the PathCentre, did not cause the dual coverage, of HSOA and CSA, to alter. It did constitute however, a significant change in employee status, from public servant, to a status of agency employee. It is different too to that of the employees of the teaching hospitals, but it is more akin, in my view, to those employees.

In terms of focusing upon comparative employees, the factor which stands out is that the HSOA has coverage over other pathology PACTS employees at the teaching hospitals. In this respect, the HSOA have membership numbers that rival those which the CSA has at the PathCentre (or its predecessor). This is a factor of particular significance, especially when reference has been made to the prospect of transfer of staff across pathology services.

There is also the existence of potential HSOA coverage of the private pathology services. Actual membership numbers may be small at present, but whether that will always be the case, will in some respects, be dependant upon whether the commercialisation aims of the PathCentre Board come to fruition and whether links are thereby established with the private pathology sector.

All this ought to be viewed in the context of the HSOA being recognised as the specialist health union, with an equivalent description being able to be applied to their Federal affiliate, the HSUA. This speaks of a capacity to provide a professional and tailored service with a further capacity to move effectively across jurisdictions. The focus of the CSA on the other hand, is across the public service as a whole, with all its range and diversity. Similarly in the case of their Federal affiliate, the Community and Public Sector Union ("CPSU").

The actual provision of services to members is one in respect of which no significant criticisms could be directed to either union, but there is nevertheless the fairly clear indication that the HSOA's staff/membership ratio is the more satisfactory of the two, with a consequential benefit to their members.

As to the factor concerning the industrial behaviour of both union organisations, it is acknowledged that this had led to a level of criticism being directed at the HSOA. Against this however, there has been a positive acknowledgment over the manner in which they had sensibly and pragmatically approached the enterprise bargaining process.

The factor of employer preference, in the context of an industrial relations environment in which enterprise bargaining is seen as the preferred means of securing improvements in terms and conditions of employment of employees, is, in a s.72A assessment, in my view, an important factor, provided the position taken was a considered one. I am satisfied that this was the case. There was thus a clear legitimate preference

expressed in favour of the HSOA.

The same cannot be said of employee preference. There is little doubt, that continued coverage by the CSA, of their own members, was strongly supported. Obviously the CSA had done a satisfactory job, in the eyes of these members. In the case of the HSOA, the position was nowhere near as clear, although implications of support by their members could be drawn. This factor is also an important one.

Having considered all of these relevant factors however, I form the view that the employee preference factor is significantly outweighed by all of the other factors. In consequence, I therefore favour the HSOA being extended exclusive representation of PACTS employees at the PathCentre.

In so concluding, it would have to be acknowledged that such a decision would not be greeted favourably by most of the 350 or so CSA members. True, it may be that they are not yet working in the new environment chosen for the PathCentre, because the new processes are still getting underway. It is important however, in my view, to address this new environment and recognise that the PathCentre is to become a public facility operated along commercial lines, with potential links with the private pathology sector. At very least, there is the capacity for the transfer of employees from teaching hospitals to the PathCentre and back. What is clear is that there should not be a union structure in place that causes any of this to be inhibited.

If this means that there is a temporary dislocation for the CSA members, then that is unfortunate. What is important is that the transition, from CSA to HSOA, should only be done after sensitive consultation with those concerned. It is not a case of them needing to be disavowed of their legitimate belief that they received good service from the CSA; rather that there are wider issues than just service that necessitated the change. On the evidence which was heard, there is a clear capacity for this to be accepted.

Therefore, in the case of the PathCentre, I would issue a s.72A Order in favour of the HSOA, enabling exclusive representation of PACTS employees.

THE PRESIDENT: A Minutes of Proposed Order will issue to reflect these reasons for decision.

Order accordingly

Appearances: Mr A Drake-Brockman (of Counsel), by leave, and with him Mr R Castiglione (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers).

Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995.

Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

2 May 1996.

Further Reasons for Decision.

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

The Full Bench issued a minutes of proposed order and heard submissions in relation to the provisions of that order and some submissions which were not strictly directed to the terms of the minute. The Full Bench was particularly concerned to hear submissions as to how it should refer to the enterprises which are covered by its order.

There was some reference to what we might call relatively insignificant matters of drafting which reflect themselves in the amended minutes of proposed order which issue herewith.

Orders (4) and (5) were matters of importance, however. In relation to order (4), there were submissions by Mr Nisbet QC as to the question of whether hospital based enterprises referred to in evidence and in the reasons for decision of the Full Bench were lawfully created, or, indeed, existed at law. That was a matter already determined in our reasons for decision and as Mr Drake-Brockman submitted could not be reactivated.

The applications by the Hospital Salaried Officers Association of Western Australia (Union of Workers) (hereinafter referred to as "the HSOA") had related each one to an identified "health service".

The Full Bench found that the gazetted names of the "health services" did not represent validly exercised changes of name. Under s.26(2) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), notwithstanding the form of the applications, we can make an order consistent with s.26(1)(a) of the Act which reflects the reasons for decision of the Full Bench. That was, summarised, that the HSOA should have coverage of those enterprises conducted by the boards of public hospitals, now or in the future, which included the provision of health services at locations removed from the hospital or hospitals which the Boards administer. The orders would therefore cover employees employed in those enterprises.

The Full Bench noted that not all hospitals were, in fact, conducting such enterprises, but that in the future all, on the evidence, would be doing so and would employ employees in the hospitals and in health services outside the hospital locations and the relevant districts.

Accordingly, we are amending our minutes of proposed order to ensure that those findings are reflected in the order. It is obviously unnecessary to refer to every existing or proposed enterprise to properly reflect our reasons for decision.

The amended minutes of proposed order will accordingly reflect what we have just said.

As to order (5), our reasons for decision reflected not only the existing Government controlled nature of The Western Australian Centre for Pathology and Medical Research (hereinafter referred to as "the PATHCENTRE") as an enterprise (see page 59), but was intended to clearly maintain Civil Service Association of Western Australia (Incorporated) coverage whilst that situation ((ie) of Government control of the PATHCENTRE) continues. Our reasons do not reflect that there should be any coverage conferred in relation to private enterprise employees privately employed in the PATHCENTRE. The original minute would have conferred

that coverage. That would not have been in accordance with the evidence and our reasons, and the minutes will be amended accordingly.

Because of these amendments we think it only fair that the applicants be offered the opportunity to speak further to these amended minutes should they wish. That, of course, will be restricted, as all speaking to the minutes are, as to whether the minutes reflect accurately our reasons for decision.

Some submissions were made but not pressed as to the right of a person given leave to be heard under s.72A of the Act to speak to the minutes. The point was not pressed and it was not necessary to decide it on this occasion.

Should the applicants wish to speak to the minutes they should advise the Associate to the President within 24 hours of the date of issue hereof and file any minutes of proposed amendments to the minutes of proposed order, together with any outlines of submissions within 48 hours following.

Order accordingly

Appearances: Mr A Drake-Brockman (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers).

Mr P Nisbet QC, by leave, and with him Mr T Carmody (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995
Nos 214-267 of 1995
Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

2 May 1996.

Order.

THESE matters having come on for hearing before the Full Bench on the 7th, 10th, 11th, 12th, 13th and 14th days of July 1995, the 11th, 12th, 13th, 14th, 15th, 18th, 19th, 20th, 21st and 22nd days of September 1995, the 16th, 17th and 30th days of November 1995, and the 1st, 7th and 11th days of December 1995, and having heard Mr A Drake-Brockman (of Counsel), by leave, and with him Mr R Castiglione (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers) ("the HSOA"), Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995, and Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) ("the CSA"), and these matters having come on for a speaking to the minutes of proposed order on the 29th day of April 1996, and having heard Mr A Drake-Brockman (of Counsel), by leave, on behalf of the HSOA and Mr P Nisbet QC, by leave, and with him Mr T Carmody (of Counsel), by leave, on behalf of the CSA, and further reasons for decision being delivered on the 2nd day of May 1996, it is this day, the 2nd day of May 1996, ordered and directed as follows—

(1) THAT leave be and is hereby granted to The Western Australian Branch of the Australian Medical Association Inc ("the AMA") to withdraw from the proceedings herein.

(2) THAT leave be and is hereby granted to The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch ("the ALHMWU") to withdraw from the proceedings herein.

(3) THAT leave be and is hereby granted to the CSA to amend its application to substitute for the name "The Australian Medical Association" the name of the said Association as follows, "The Western Australian Branch of the Australian Medical Association Inc" wherever it appears in the said application.

(4) THAT the abovenamed HSOA henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (including those listed in Schedule B to the applications herein) employed by the boards of any public hospital constituted under the Hospitals and Health Services Act 1927 (as amended) in such hospitals or for the provision of health services in any district or area in which such board or boards are required or have a duty to provide such services, to the exclusion of the CSA and any other organisation of employees registered under the Industrial Relations Act 1979 (as amended) ("the Act"), save for employees eligible for membership of the AMA and the ALHMWU.

(5) THAT the abovenamed CSA henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Board of the Western Australian Centre for Pathology and Medical Research and/or any other Western Australian State Government controlled person, enterprise or corporation who is presently or henceforth the employer of employees in the said Western Australian Centre for Pathology and Medical Research to the exclusion of the HSOA and any other organisation of employees registered under the Act, save for persons eligible for membership of the AMA.

(6) THAT the Full Bench, being satisfied that the rules of the abovenamed applicant organisations need to be altered, does hereby order pursuant to s.72A(6) of the Act, that the rules of the said applicant organisations be referred to the President.

(7) THAT the applications herein otherwise be and are hereby wholly dismissed.

By the Full Bench

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

FULL BENCH—
Unions—Declarations made under Section 71—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

(Applicant)

No 594 of 1996.

BEFORE THE FULL BENCH.

HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER W S COLEMAN
COMMISSIONER R H GIFFORD

28 May 1996.

Reasons for Decision.

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

The abovenamed applicant is an organisation as that is defined in s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). It is therefore a "State organisation", too, as that is defined in s.71(1) of the Act.

The Western Australian Branch of the Miscellaneous Workers Division of The Australian Liquor, Hospitality and Miscellaneous Workers Union is the Western Australian Branch of an organisation of employees registered under the Commonwealth Act for the purposes of s.71(1) of the Act.

The applicant seeks a declaration pursuant to s.71(2) of the Act that the Full Bench declare that it is of the opinion that the rules relating to qualification of persons for membership of the Branch are the same as those of the applicant, and vice versa.

Under s.71(1) of the Act a "Counterpart Federal Body", in relation to a State organisation, means a Branch the rules of which—

(a) relating to the qualifications of persons for membership; and

(b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter (see s.71(1) of the Act).

Further, by s.71(2) of the Act the rules of the State organisation and its Counterpart Federal Body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same (see s.71(2) of the Act).

The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is—

(a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's Counterpart Federal Body; or

(b) eligible to be a member of the Counterpart Federal Body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation (see s.71(3) of the Act).

The rules of a Counterpart Federal Body prescribing the offices which shall exist in the Branch are deemed to be the same as the rules of the State organisation prescribing the offices which shall exist in the State organisation if, for every office in the State organisation there is a corresponding office in the Branch (see s.71(4) of the Act).

There was an affidavit filed in this matter sworn by Helen Margaret Creed sworn on 3 May 1996. As a result of perusing that affidavit, which was admitted into evidence, we are satisfied that all of the statements required to be filed under regulation 101 of the Industrial Relations Commission Regulations 1985 (as amended) (hereinafter referred to as "the Regulations") have been filed, and that on 21 February 1996 a duly convened quarterly general meeting of the members of the applicant was held pursuant to rule 29(2) of the applicant's rules, in particular there being a quorum present.

We are also satisfied, having perused the affidavit and examined the statement, required to be filed under regulation 101 of the Regulations, that the rules of the Branch prescribing the offices which exist in the Branch should be deemed to be the same as the rules of the State organisation prescribing the offices which exist in the State organisation, because for every office in the State organisation there is in the rules of the Branch, a corresponding office in the Branch.

Further, we are satisfied that approximately 295 persons who are eligible for membership of the applicant pursuant to rule 4(7) of its rules are not eligible for membership of the Branch. However, a perusal of the rules in some detail of both organisations makes it quite clear that the eligibility in each case is substantially the same, although different expressions of eligibility are used in some parts of the rules of each organisation.

As to what substantial means that is "real or of substance as distinct from ephemeral or nominal" or "considerable or main or essentially" (see Re an application by the CSA 73 WAIG 2931 at 2932 (FB)). Applying that meaning, we find that the rules of the State organisation and its Counterpart Federal Body are substantially the same.

We are therefore satisfied that the Branch is a Branch, the rules of which—

(a) relating to the qualifications of persons for membership; and

(b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with s.71(1) of the Act, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter. We would declare accordingly.

Declared accordingly

Appearances: Mr D H Schapper (of Counsel), by leave, on behalf of the applicant.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

(Applicant)

No 594 of 1996.

BEFORE THE FULL BENCH.

HIS HONOUR THE PRESIDENT P J SHARKEY
CHIEF COMMISSIONER W S COLEMAN
COMMISSIONER R H GIFFORD

24 May 1996.

Declaration.

THIS matter having come on for hearing before the Full Bench on the 24th day of May 1996, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicant and there being no other party desiring to be heard in respect of this application, and the Full Bench being of the opinion upon the evidence that the rules of the State organisation, the applicant herein, and the Counterpart Federal Body relating to the qualifications of persons for membership of each such body are substantially the same, and the Full Bench also being of opinion that the rules of the Counterpart Federal Body prescribing the offices which exist in the Branch are the same in this respect as the rules which exist in the State organisation, the applicant herein, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 24th day of May 1996, ordered and declared as follows—

(1) THAT the rules of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and its Counterpart Federal Body, the Western Australian Branch of the Miscellaneous Workers Division of The Australian Liquor, Hospitality and Miscellaneous Workers Union, relating to the qualifications of persons for membership be and are

deemed to be the same, in accordance with s.71(2) of the Industrial Relations Act 1979 (as amended) ("the Act").

(2) THAT the rules of the Counterpart Federal Body prescribing the offices which shall exist in the Branch be and are hereby deemed to be the same as the rules of the applicant herein, prescribing the offices which exist in the applicant, in accordance with s.71(4) of the Act.

By the Full Bench.

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

COMMISSION IN COURT SESSION— Matters dealt with—

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 Others

and

Western Australian Mint.

No. CR 344 of 1995.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G G HALLIWELL
COMMISSIONER R N GEORGE
COMMISSIONER A R BEECH.

18 April 1996.

Reasons for Decision.

SENIOR COMMISSIONER HALLIWELL: The Reasons for Decision of Commissioner A.R. Beech are the unanimous Reasons for Decision of the Commission In Court Session.

COMMISSIONER BEECH: This matter is referred to the Commission as a Special Case. The Western Australian Mint is a wholly owned subsidiary of Gold Corporation. Gold Corporation is established by the *Gold Corporation Act*, a statute of the Parliament of Western Australia. Gold Corporation employs approximately 254 staff. The Western Australian Mint employs staff in the security, processing, trades and clerical areas. Approximately 60 staff of the WA Mint are employed pursuant to awards of this Commission. 14 are on workplace agreements, and the balance are on common law contracts. In September 1995 Gold Corporation paid a bonus to its employees in the form of a payment equal to 2.5% of salary as at 30 June 1995. The bonus applied to the employees of the Western Australian Mint. However, employees of the Western Australian Mint covered by awards were excluded from the bonus and the claim before the Commission is for an order that the bonus be paid to those employees. The decision to exclude award covered employees was made by GoldCorp's Remuneration and Allowances Committee which consists of the Chairman, the Chief Executive and a Director of the Company.

It is common ground between the parties that the bonus is a discretionary payment made by the Western Australian Mint. The bonus is not a condition of service of any of Western Australian Mint's employees.

The decision not to pay the bonus to award covered employees of the Western Australian Mint was made for two reasons. The first reason was that it was decided to reward the staff who had provided it with the formal flexibility to be able to participate in a highly competitive international marketplace, and those staff were seen as being the employees who had signed workplace agreements or who had been on common law contracts. The second reason was a belief that the awards covering the employees were paid rates awards (transcript page 33). However, this second reason was seen as being a minor consideration. The decision was reflected in the letter awarding the bonus which was sent to employees and which included the following statement:

> "Award staff are ineligible because of the inflexibility of the current award system."

The decision taken to exclude employees covered by awards at the Western Australian Mint cannot be judged separately from the reason for the payment of the bonus. On the evidence, the bonus was paid because:

> "The Group's profit for 1994/95 has exceeded budget as a result of a number of factors including unbudgetted Treasury profits from currency hedging and metal trading, benefits accruing from the closure of AGR-Kalgoorlie and better than expected medallion sales.
>
> In some operating areas, however, results were disappointing and there are considerable development costs involved in expanding our businesses in the Asian region.
>
> The Board of Directors has, nevertheless, approved management's proposal to pay an ex gratia bonus to eligible staff in appreciation of their commitment and the results achieved in the past year."
>
> (Extract Exhibit S3).

It will be seen from the above that the bonus was paid in appreciation of the commitment and the results achieved in the past year by the Group. The Group consists of The Western Australian Mint, GoldCorp Australia, Gold Corporation (Thailand) Limited, Perth Mint (Thailand) Limited, Gold Corporation (Lanka) Limited, WA Mint Pty Ltd and GoldCorp Australia (Hong Kong) Limited. The Group profit for 1994/95 is the result of the operation of all of the above subsidiaries of Gold Corporation and not merely the performance of the Western Australian Mint. This is so because the number of factors which contributed to the Group exceeding budget includes unbudgetted Treasury profits from currency hedging and metal trading, benefits accruing from the closure of AGR Kalgoorlie and better than expected medallion sales. It is difficult to see how a group of employees can be excluded from a bonus paid as a result of a Group profit when there is nothing before the Commission to show the contribution or otherwise of Western Australian Mint to the Group profit as a whole. In any event, even if it could be shown that the Western Australian Mint performed disappointingly, the decision to pay the bonus was made notwithstanding that in some operating areas results were disappointing. In this regard the above letter notes that there were considerable development costs involved in expanding GoldCorp's businesses in the Asian region. It is open to conclude therefore that even though some parts of GoldCorp's operations may have provided a disappointing result, the bonus would still be paid. Therefore the arguments in support of the decision to exclude the bonus to award covered employees at the Western Australian Mint are not supported by the reasons it paid the bonus to its other employees.

This conclusion is reinforced by the direct evidence before the Commission that the decision to pay or not pay the bonus was not based upon any consideration of the performance of individual employees. Employees covered by the awards were merely seen as a class that it was desirable to exclude for the reasons given. However, based upon the reasons for the payment of the bonus the exclusion cannot stand. There is no reason to discriminate between employees solely on the basis of the method of prescription of their conditions of employment, when it is quite clear that the bonus was paid for reasons which did not directly relate to individual work performance.

The conclusion is reinforced further when it is understood that the bonus paid on this occasion is similar in substance to the bonus paid for the previous financial year. In August 1993 Gold Corporation wrote a memorandum to all staff stating that the Group profit for 1992-1993 exceeded the original budget and the Board of Directors expressed its appreciation for the efforts of all staff during the year which contributed to the improved result in spite of difficult markets (exhibit S1). The better than anticipated figures on that occasion were due to a number of factors which were stated to be the strong per-

formance of GoldCorp Australia through its coin and medallion programmes; the promising performance in Indo China of the new marketing initiatives; the benefits of the diversification strategy beginning to emerge; improved metal recoveries; improved cost control, with staff levels also becoming more realistic. On that occasion the bonus was paid to all staff without discrimination, although it is to be noted that at that time there were not any employees employed pursuant to workplace agreements. The point to be made however is that the bonus was paid to all employees of GoldCorp for reasons which were similar to the reasons why the bonus was payable for the financial year 1994/95. That is, the Group profits were obtained from the performance of the group as a whole and no individual or group of employees was treated differently in any respect from any other. On that understanding, there can be no valid reason now for excluding employees employed pursuant to awards at the Western Australian Mint from the bonus received by all other employees of Gold Corporation.

The conclusion reached by the Commission is rendered even more certain by the evidence that not only was individual performance not taken into account in the decision to pay the bonus, it was conceded that it was entirely possible that an individual employee employed under an award may have been more productive in the past year than an employee employed under a workplace agreement. The conclusion that is readily drawn from this admission is that even if the decision to limit the bonus to "productive" employees only was found to be valid, then excluding employees because they were employed under the award and not because they were less productive simply cannot be justified.

Finally, the decision taken to exclude award covered employees did not take into account the informal agreements between the Western Australian Mint and the ALHMWU which depart from the *WA Mint Security Officers Award 1988* in a number of areas and which provide for flexibility in the areas covered by them. These agreements involve departures from the award but are not registered agreements. It ill behoves the Western Australian Mint to state that these agreements were not considered as providing flexibility because they were not "formal", which the Commission understands to mean "registered". The informal agreements they have signed would need to be registered in order to have legal force and effect because of s 114 of the *Industrial Relations Act 1979*. However the Western Australian Mint has, apparently, acted in accordance with those agreements whether the award concerned is thereby breached or not and has acted as though those agreements were registered. It cannot be heard now to complain that they are not of significance because they are not registered.

The second, although minor, reason why award covered employees were excluded was some consideration that the awards covering the employees are paid rates awards. The matter was not pursued before us but to the extent that there is any substance in that view it would not, on the grounds argued before us, prevent the awarding of an exgratia bonus that is not a condition of employment in these circumstances because the tests of a Special Case are met.

For the above reasons the application will be granted. The minute of a proposed order now issues.

Appearances: Mr G Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

Mr J Dasey for the Civil Service Association of Western Australia.

Mr N Ellery for the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

Mr T Dobson for the Western Australian Mint.

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 Others

and

Western Australian Mint.

No. CR 344 of 1995.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G G HALLIWELL
COMMISSIONER R N GEORGE
COMMISSIONER A R BEECH.

15 May 1996.

Order.

HAVING heard Mr G Sturman on behalf of the The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Mr J Dasey for the Civil Service Association of Western Australia, Mr N Ellery for the The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, Mr T Dobson for the Western Australian Mint, the Commission in Court Session hereby orders—

THAT the Western Australian Mint pay award staff employed by it the bonus payment paid by it to non-award staff in for the 1994/95 financial year on the same qualification and quantum basis as advised by the company to non award staff on 6 September 1995.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

PRESIDENT—
Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kimberley Terence Kelly and Gregory Bernard Glossop
(Applicants)

and

Electoral Commissioner, WA Electoral Commission and Western Australian Police Union of Workers
(Respondents).

Nos. 469 and 470 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

16 April 1996.

Order.

THESE matters having come on for a directions hearing before me on the 16th day of April 1996, and having heard Mr K T Kelly as applicant on his own behalf, Mr G B Glossop as applicant on his own behalf, Ms J H Smith (of Counsel), by leave, on behalf of the Electoral Commissioner, WA Electoral Commission as respondent, and Mr R Stirling on behalf of the Western Australian Police Union of Workers as respondent, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of these matters, it is this day, the 16th day of April 1996, ordered and directed as follows—

(1) THAT application No 469 of 1996 and application No 470 of 1996 be heard together and these matters be set down for hearing and determination to 10.00 am on Monday, the 20th day of May 1996.

(2) THAT the applicants herein and the respondent, Electoral Commissioner, WA Electoral Commission, afford discovery and inspection one to the other of all relevant documents within seven days of the 16th

day of April 1996.

(3) THAT the applicants herein and the respondent, Electoral Commissioner, WA Electoral Commission, do file and serve statements of evidence to be given in these proceedings upon the parties to these proceedings or their solicitors or agents as follows—

(a) that the statement of evidence for the applicants herein be filed and served within seven days of the 16th day of April 1996.

(b) that the statement of evidence for the respondent, Electoral Commissioner, WA Electoral Commission, witnesses be filed and served on or before the 1st day of May 1996.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kimberley Terence Kelly and Gregory Bernard Glossop
(Applicants)

and

Electoral Commissioner, WA Electoral Commission and Western Australian Police Union of Workers
(Respondents).

Nos. 469 and 470 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

20 May 1996.

Order.

THESE matters having been due to come on for hearing before me on the 20th day of May 1996, and the applicants herein having sought leave to withdraw the said applications by letters dated the 16th day of May 1996, and the first respondent and second respondent herein having consented by letters dated the 10th day of May 1996 and the 13th day of May 1996 respectively to the applications being withdrawn, and the applicants and respondents having consented in writing to waive their rights to speak to the minutes of proposed order in accordance with s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the said letters having been filed herein, and the applicants herein having filed notices of discontinuance, and I being satisfied by reason thereof that the applications should be discontinued, and having determined, pursuant to s.27(1)(a)(ii) and (iv) of the Act, that I should therefore refrain from further hearing or determining the applications herein, it is this day, the 20th day of May 1996, ordered and declared that I refrain from further hearing and determining the said applications or any part thereof, and that applications Nos 469 and 470 of 1996 be and are hereby withdrawn by consent.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Spasoje Nedeljkovic
(Applicant)

and

The West Australian Locomotive Driver's, Firemen's and Cleaner's Union of Workers
(Respondent)

No 573 of 1996.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY

23 May 1996.

Reasons for Decision.

THE PRESIDENT: This is an application brought under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

Jurisdiction is conferred on the Commission, constituted by the President in this matter, because the applicant is, and has been for some years, a member of the respondent, which is an organisation as defined in s.7 of the Act.

The applicant claims in his application that the provisions and requirement of the registered rules (exhibit 1), rules 7(2), 8(1)(a) and 8(2), have not been "observed in a proper manner".

By the application, the applicant seeks the following orders—

"1) "That the Special Delegates Conference held on the 10th and 11th of April 1996, at the Registered Office of the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers, 33 Brewer Street, Perth WA, be declared null and void."

2) "That all resolutions passed at the Special Delegates Conference also be declared null and void.""

The basis on which the orders were sought are—

"1) That the Special Delegate Conference was called contrary to the Registered Rules 7(2), 8(1)(a) and 8(2), as the notices sent out to the conference delegates was dated prior to the conference being called by the General Committee.

2) It is also alleged that the General Committee did not, in accordance with the Rules, call such conference.

3) There was no agenda submitted for the branches consideration so as to direct their delegates accordingly, to voting on particular items."

The answer herein (as amended) reads as follows—

"1. The respondent denies the registered rules set out in Schedule B of the application or any of its rules have been breached as alleged by the applicant.

2. The respondent denies that there is any basis to the orders sought, and denies the applicant is entitled to the relief sought or any relief whatsoever.

3. The respondent says that in any event the relief sought should be denied because the applicant amongst others is presently, and has in the past, actively campaigned against the respondent organisation and its members."

The applicant elected not to seek leave to amend his application to enable him to make other complaints of breach of the rules to which he referred during the proceedings.

The General Committee resolved at a Special General Committee Meeting on 13 February 1996 to call a Special Delegates "Conference". The General Secretary was charged with the task of calling the meeting. Subsequently, the date of and agenda for that Special Delegates Meeting were approved by the General Committee on 1 April 1996.

The resolution passed at the Special General Committee Meeting of 13 February 1996 read as follows—

"Due to recent events and attacks on this Union (external and internal) this General Committee gives permission for the calling of a Special Delegate Conference (and the waiving of a 21-day requirement notice) at the appropriate time."

On 29 March 1996 notices were sent out to delegates prior to the meeting giving notice that the "conference" was to take place on 10 and 11 April 1996. These notices were signed by the General Secretary and contained reference to items of business. Obviously, 21 days notice for the meeting was not given. There is no evidence that any notice was given to the branch

or branches in each district.

The notice of 29 March 1996, forwarded to delegates over the signature of the General Secretary, advised that the meeting would be convened on 10 and 11 April 1996 to deal with the following—

"1. The implementation of changes associated with the Crew Reform Agreements. (AG20 and AG21/96).
2. Campaign by the PTU/ARU (WA) within Westrail—in particular against Members of this Union.
3. General Business."

At a General Committee Meeting on 1 April 1996 that body was advised that arrangements had now been made for the calling of a Special Delegates Meeting convened for 10 and 11 April 1996.

Rule 22(p) enables the General Committee to direct the labours of the General Secretary, and particularly to direct him to make arrangements for the holding of Delegate Meetings. Indeed, the exact relevant words are that the General Secretary "be held responsible for the due issue of the same ((ie) the annual report) and for the requisite arrangements for the holding of Delegate Meetings".

The meeting was convened for and took place on 10 and 11 April 1996.

On 9 April 1996 the applicant had delivered a letter to the General President, Mr Keith Campbell, in which he advised—

(1) That he had just found out that there was to be a "Special Delegate Conference" on 10 and 11 April 1996.
(2) That he was unaware what the agenda was for the meeting and had not been given an opportunity to consider and direct his delegate how to vote on the issues to be considered.
(3) That he believed that the calling of the meeting was in breach of rule 7(2), 8(1)(a) and 8(2).
(4) He asked Mr Campbell to cancel the "conference".

This letter was tabled at the Special Delegates Meeting, but was not responded to and not, insofar as the Minutes record it, commented upon in any way.

Mr Campbell did not cancel the meeting, nor was it established that he did have any power to do so. Whether the General Committee could have is not a matter which I am required to decide upon this application.

The Minutes of the Special Delegates "Conference" (exhibit 4) (not yet confirmed, but not disputed as to their authenticity) recorded this resolution (see page 8)—

> "This Special Delegates Conference endorse(s) the actions of the General Committee in the reconvening of Conference."

I should add that it is quite certain that the Triennial Delegates Meeting of 1995 was not reconvened, but that a Special Delegates Meeting (which is the proper word rather than "conference") was called for 10 and 11 April 1996.

Rule 7(1) prescribes for the election of delegates, their terms of office and powers and most relevantly provides—

> "The closing date for the receipt of Agenda items shall be at least three months before Conference meets, after which a list of such items shall be forwarded to Branches."

Rule 7(2) prescribes as follows—

"(2) Any amendments to Rules, or any matters which a Branch may require to be discussed at a Delegate Meeting shall be submitted as a motion and carried before being sent forward as an Agenda item. All such matters shall be forwarded to the General Secretary not later than on a date to be fixed by the General Committee prior to such Delegate Meeting—to enable same to be placed on the Agenda Paper of the Delegate Meeting—so that Branches may have an opportunity of instructing their Delegates thereon."

Rule 8 prescribes that Special Delegate Meetings may be summoned by the General Committee.

Rule 8(2) provides as follows—

"(2) In all cases, where possible, twenty-one days notice of such Delegate Meeting shall be given to each District entitled to a seat thereat."

It is relevant that rule 8 makes provision for Special Delegate Meetings and that these are called according to different requirements from the normal Triennial Delegates Meeting. (The rules refer to Delegate Meetings not to Delegate Conferences).

Rule 9 provides as follows—

"9. POWERS OF DELEGATES

The Delegates shall have power to amend, rescind or make Rules, to remove from office any Officer, Trustee, or Member of the General Committee, and to decide all appeals against the decision of the General Committee."

The three grounds of complaint by the applicant are those set out as those grounds which were the basis of the application herein.

There was oral evidence by Mr Nedeljkovic, the applicant himself, and he was the only witness called on behalf of the applicant. There was also documentary evidence.

The respondent called one witness, Mr Kevin Warren Jarrett, the Fremantle delegate on the General Committee, the General Vice-President for three and a half years of the respondent, the Fremantle delegate to the Triennial Delegate and Special Delegate Meetings, and, of course, a member of the respondent organisation.

All delegates were able to and did attend the Special Delegates Meeting of 10 and 11 April 1996, except the GSR delegate who had resigned.

It is quite clear, as a matter of evidence, and I so find, that the General Committee called the Special Delegates Meeting fixing a date through the agency of the General Secretary, which it was empowered to do under the rules.

The General Secretary was only carrying out the logistics of calling the meeting, which he is required to do under rule 22(p), and which the General Committee is empowered to direct him to do, which it did, under rule 22(p).

Twenty one days notice was not given as required by rule 7(2), but this is required by rule 7(2) only to be given where possible.

Mr Jarrett's evidence was that there was a problem with delegates attending the Special Delegates Meeting because it was a busy time, and, in fact, as I understand the evidence, arrangements had to be made, particularly in relation to Northam and Narngulu. The meeting was called urgently, he said, because there was the PTU/ARU campaign and there was an official dispute with Westrail over items contained in an industrial agreement.

I accept that there was some urgency in arranging the meeting and some difficulty in arranging it.

There was therefore evidence that it was necessary to have regard to availability of dates, and that is why 21 days notice was not given. That was not contradicted. I am not satisfied, on that evidence, which I accept, that it was possible for those reasons to give 21 days notice, and thus I am able to say that the rule was complied with in the giving of notice.

The notices which were sent out notifying delegates of the Special Delegates Meeting, and sent out on 29 March 1996, followed a reservation that such meeting be called passed on 13 February 1996, as I have observed. The notice itself was sufficient notice of the agenda of such Special Delegates Meeting, since it set out those items to be dealt with. The agenda coincides, too, for the most part, with Mr Jarrett's evidence of the reason or reasons why the meeting was called.

Further, insofar as the notice was directed to delegates, it was forwarded in compliance with the rules. The districts are represented at Delegate Meetings by delegates of those districts. The supreme governing body is the Triennial Delegates Meeting or a Special Meeting of the delegates (see rule 6). The meeting is constituted almost entirely by delegates from each district. There was therefore no requirement in the rules, nor could there be, said to be in the rules, to give notice of the meeting to the districts. The same observation applies to giving notice of the agenda. It would be the responsibility of the del-

egates to seek instructions from branches in the districts as to matters which are on the agenda for a Triennial Delegates Meeting or a Special Delegates Meeting, and one would expect that that would always be done.

I have considered all of the evidence, both oral and written, and all of the submissions made to me.

For those reasons I am satisfied that there was sufficient compliance with the rules. I also find that it has not been established that any breach of the rules has been committed, as alleged. I will therefore dismiss the application.

Order accordingly.

Appearances: Mr S Nedeljkovic on his own behalf as applicant.

Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Spasoje Nedeljkovic
(Applicant)
and

The West Australian Locomotive Driver's, Firemen's and Cleaner's Union of Workers
(Respondent)

No 573 of 1996.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY

23 May 1996.

Order.

THIS matter having come on for hearing before me on the 7th day of May 1996, and having heard Mr S Nedeljkovic on his own behalf as applicant and Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation, and having reserved my decision on the matter, and reasons for decision being delivered on the 23rd day of May 1996 wherein I found that the application should be dismissed and gave reasons therefore, it is this day, the 23rd day of May 1996, ordered that application No. 573 of 1996 be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Spasoje Nedeljkovic
(Applicant)
and

The West Australian Locomotive Driver's, Firemen's and Cleaner's Union of Workers
(Respondent)

No 573 of 1996.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY

24 April 1996.

Order.

THIS matter having come on for a directions hearing before me on the 24th day of April 1996, and having heard Mr S Nedeljkovic on his own behalf as applicant and Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, it is this day, the 24th day of April 1996, ordered and directed as follows—

(1) THAT application No 573 of 1996 be and is hereby adjourned for hearing and determination to 10.00 am on Tuesday, the 7th day of May 1996.

(2) THAT leave be and is hereby granted to Mr J O Kennedy (of Counsel) to appear on behalf of the respondent organisation upon this application.

(3) THAT the respondent organisation herein provide, within seven days of the 24th day of April 1996, to the applicant herein discovery, inspection and a copy of the following documents—

(a) A copy of the approval authorisation for Mr Kennedy or his instructing solicitors to act and appear on behalf of the respondent organisation.

(b) A copy of the Minutes of the General Committee of the respondent organisation which purports to call the Special Delegates Conference on the 10th and 11th days of April 1996.

(c) A copy of the up-to-date rules of the respondent organisation.

(d) A copy of any resolution authorising the General Committee to alter the respondent organisation's rules which may have been passed in 1995/1996.

(e) A copy of the notice sent to delegates, branches and members advising of the date of the Special Delegates Conference.

(f) A copy of the agenda for the Special Delegates Conference sent to delegates, branches and members.

(g) Any Minutes of the Special Delegates Conference of the 10th and 11th days of April 1996, whether interim or confirmed.

(4) THAT the applicant herein provide, within three days of the 1st day of May 1996, to the respondent organisation herein discovery, inspection and a copy of those documents not referred to above in order (3) on which the applicant intends to rely upon in these proceedings.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Shop, Distributive and Allied Employees' Association of Western Australia
(Respondent).

No. 461 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

23 May 1996.

Reasons for Decision.

THE PRESIDENT: This is an application by the Registrar which he makes under s.66(7) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

In the application he alleges that rule 30 of the rules of the respondent organisation of employees is contrary to or inconsistent with s.64A and s.64B of the Act in that—

> "Rule 30 provides that subject to the provisions of the Industrial Relations Act, 1912-1975 no member shall discontinue his membership by resignation without giving at least three months' previous written notice of his intention to do so, whereas Section 64A provides that resignation of membership takes effect on the day on which notice of resignation is served on the organisation or on a later date specified in the notice and;
>
> Rule 30 requires that in lieu of notice, payment of a sum equal to three months' contribution, nor until he has paid all dues payable by him to the Union under its rules up to the date on which his resignation takes effect, or has obtained a clearance card, whereas Section 64B provides that where no subscription to continue or renew membership has been paid, a persons membership expires at the expiration of a three month period after the end of the period for which subscriptions have been paid."

The respondent, The Shop, Distributive and Allied Employees' Association of Western Australia, opposes the application on the grounds set out in its answer and counter proposal.

RELEVANT STATUTORY PROVISIONS AND RULES

S.64A of the Act provides as follows—

> "(1) A member of an organization may end that membership by written notice of resignation addressed to the organization.
>
> (2) A notice of resignation shall be served on the organization by—
>
> (a) delivering it personally to the organization's office at the address registered under section 58 (1) (c); or
>
> (b) sending it by certified mail to the address mentioned in paragraph (a) or to the address of the organization as ascertained by referring to a current directory of telephone numbers.
>
> (3) A notice of resignation takes effect on the day on which it is served on the organization or on a later day specified in the notice."

S.64B of the Act provides as follows—

> "(1) Where—
>
> (a) a period in respect of which a subscription has been paid to an organization for a person's membership of the organization expires; and
>
> (b) no subscription to continue or renew that membership has been paid to the organization before, or within 3 months after, that expiry,
>
> that membership ends by operation of this subsection at the end of that 3 month period.
>
> (2) Subsection (1) does not apply if the membership has already ended under section 64A or under the rules of the organization."

S.64C of the Act provides as follows—

> "(1) The ways of ending membership of an organization set out in sections 64A and 64B are in addition to any ways of ending that membership provided for in the rules of the organization.
>
> (2) The ending of membership of an organization under section 64A or 64B has effect despite anything in the rules of the organization."

These provisions were instituted by Act No 1 of 1995 s.51.

S.64D of the Act provides as follows—

> "The rules of an organization shall provide for the register referred to in section 63 to be purged on not less than 4 occasions in each year by striking off the names of members whose membership has ended under section 64A or 64B or under the rules."

This provision was inserted by Act No 79 of 1995 s.32.

S.55(4)(f) of the Act, before it was repealed on 16 January 1996 by Act No 79 of 1995 s.31, provided that the Full Bench was required to refuse an application by an organisation for registration where, inter alia—

> "(f) the rules of the organization provide for the purging of the register referred to in section 63 by striking off members in arrears of dues for such period as is prescribed by the rules not exceeding 12 months."

S.66(7) of the Act provides as follows—

> "(7) When 6 months have elapsed after the coming into operation of section 51 of the *Industrial Legislation Amendment Act 1995* the Registrar shall review the rules of each organization and shall, by application pursuant to this section, bring before the President the rules of any organization if, in the opinion of the Registrar, any such rule is contrary to or inconsistent with section 64A or 64B."

That provision was inserted by Act No 1 of 1995 ss.52 and 53 and Act No 79 of 1995 s.33.

Rule 30, which is the rule complained of, and sought to be disallowed, reads as follows—

> "30. RESIGNATION OF MEMBERS
>
> Subject to the provisions of the Industrial Arbitration Act, 1912-1975 no member shall discontinue his membership by resignation without giving at least three months' previous written notice of his intention to do so, or paying a sum equal to three months' contribution in lieu of notice, nor until he has paid all dues payable by him to the Union under its rules up to the date on which his resignation takes effect, or has obtained a clearance card."

Rule 31, which must be read with rule 30, reads as follows—

> "31. CLEARANCE CARDS
>
> Any member wishing to draw his clearance shall notify the General Secretary or Organiser or, if a member of a Branch, the Secretary of his particular Branch, in writing, of his intention, and shall pay all dues owing to the Union under its Rules. The General Secretary or Secretary of the Branch shall then grant the clearance."

The powers of the President invoked by the application are those contained in s.66(2)(a) of the Act which enable the President to disallow any rule which, in his opinion, "is contrary to or inconsistent with any Act or law, or an award, industrial agreement, order or direction made, registered or given under this Act". The Act in question is, in this case, this Act.

I should add that the President under s.66(2)(b) of the Act, instead of disallowing a rule under paragraph (a), may direct the organisation to alter that rule within a specified time in such manner as the President may direct.

The applicant is the Registrar, appointed pursuant to the Act, as defined in s.7 of the Act. The respondent is an organisation of employees, as organisation is defined in s.7 of the Act, that is registered under Division 4 of Part II of the Act.

I now deal with the statutory provisions which are relevant in this matter by some discussion of what they prescribe—

(1) S.64A(1) of the Act prescribes for resignation from an organisation. It prescribes as follows—

(a) A member of an organisation may end that membership by written notice of resignation addressed to the organisation.

(b) The method of service of the notice is prescribed.

(c) (i) The notice of resignation takes effect on the day on which it is served on the organisation or on a later day specified in that notice.

(ii) It is noteworthy that the sole requirement for an effective notice of resignation is that there must be a written notice of resignation addressed to the organisation concerned (and served as prescribed), which then takes effect without any other condition on the day on which it is served or on a later day specified in that notice.

I observe that s.64A of the Act therefore prescribes not only the manner in which a resignation is effected, but how and when it will take effect. Importantly, there is no trammelling of the right to resign prescribed in the section.

(2) S.64B of the Act provides for membership of an organisation to end if the subscription is not paid.

(a) The section first prescribes that where the period for which a person has paid a subscription to be a member expires, and no subscription is paid before that expiry date or within three months after it, then the membership automatically ends by the operation of s.64B(1)(b) at the end of the three month period.

(b) If the member has given notice of resignation under s.64A, that provision obviously does not apply.

I observe that that section, as is the case with s.64A of the Act, enables a member to resign membership whether an amount is due or owing by a member under the rules or not.

(3) S.64C of the Act is important—

(a) It provides that the ways of ending membership are those prescribed in s.64A and s.64B, that is by notice of resignation and by failing to renew membership by payment of subscription before or within three months after the expiry of that period of a previously subscribed for membership. That is in addition to any other ways of ending membership which the rules provide for.

(b) Since the ending of membership of an organisation under s.64A or s.64B has effect despite anything in the rules of the organisation, nothing in the rules which might contradict or purport to detract from what s.64A or s.64B provides for can have any effect.

(4) S.64D of the Act requires that the rules of an organisation provide for the register referred to in s.63 of the Act to be purged on not less than four occasions in each year.

ISSUES AND CONCLUSIONS

Under s.66(7) of the Act, the Registrar is charged with the mandatory duty of reviewing the rules of each organisation, that is an organisation as defined under s.7 of the Act, when six months have elapsed from the coming into operation of s.51 of the Industrial Legislation Amendment Act 1995, which came into operation on 9 May 1995. The first date on which the Registrar was required to carry out that duty was after the elapse of six months from 9 May 1995, namely 10 November 1995.

After the Registrar has reviewed the rules he then has a mandatory duty (see the use of the word "shall" and see s.56 of the Interpretation Act 1984 (as amended)) to bring before the President the rules of any organisation. However, that duty only exists if the Registrar holds an opinion that any such rule is contrary to or inconsistent with s.64A or s.64B. In other words, if the Registrar does not hold that opinion he has no duty to bring the matter before the President. If the Registrar does hold that opinion, he is under a duty to bring the rules of an organisation before the President under s.66(7) of the Act. The President then exercises his jurisdiction in accordance with s.66(2)(a) and (b) of the Act.

For those purposes, rule 30 is inconsistent with any Act or law if it is inconsistent with s.64A or s.64B of the Act.

It is now necessary to interpret rule 30, and, to some extent, rule 31, and the relevant provisions of the Act to which I have referred above.

Rules 30 and 31 must be construed in the context of the whole of the rules, just as the sections of the Act must be construed in the context of the whole of the Act. That is, no provision can be interpreted in isolation. Also, the method of interpreting the rules of an organisation of employees are prescribed in HSOA v Minister for Health 61 WAIG 616 at 618 (IAC) per Brinsden J where His Honour said—

> "Generally speaking the correct approach to the interpretation of a union rule is to interpret it in the same manner as any otherr (sic) document. It must be remembered however that union rules are not necessarily drafted by skilled draftsmen. It is therefore necessary I think in construing a union rule not to place too literal adherence to the strict technical meaning of words but to view the matter broadly in an endeavour to give it a meaning consistent with the intention of the draftsman of the rule. This approach has been endorsed in relation to awards: see Geo A. Bond & Co. Ltd. (In Liq.) v. McKenzie (1929) A.R. 499 at 503-4 referred to in Federal Industrial Law by Mills and Sorrell 5th Ed. at p.522. I also said much the same thing in the unreported decision of Bradley v. The Homes of Peace 1005/1978, judgment delivered 21st December, 1978 at p.13-14."

I, of course, am bound by what His Honour said.

(See also R v Aird; Ex parte AWU [1973] 129 CLR 654 (HC)).

Further, the statute is to be interpreted by interpreting its provisions according to the natural meaning of the words unless that would lead to absurdity or ambiguity (see Cody v J H Nelson Pty Ltd [1947] 74 CLR 629 (HC) per Dixon J at page 647).

However, the fundamental object of statutory construction in every case is to ascertain the legislative intention by reference to the language of the instrument viewed as a whole (see Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation 35 ALR 151 at 169-170 (HC) per Mason and Wilson JJ).

If one reads rule 30 with the generous approach which the authorities require one to use, one can fairly say that the authors of the rule plainly intended that the rule is to be read subject to the Industrial Arbitration Act 1912-1975 or the industrial arbitration legislation of the day, and, in particular, the legislation which governs the regulation, registration and rules of employment organisations. That legislation is, of course, the Act as the successor to the Industrial Arbitration Act 1912-1975. If that approach is taken then the rule provides that the obligations which it imposes are to be read as subject to the provisions of the Act.

Ms Smith (of Counsel), who appeared for the appellant, submitted that that could not be the case because the Act identified in the rule has been repealed.

Mr Nisbet QC submitted that the Industrial Arbitration Act 1912-1975 was repealed by the Industrial Relations Act 1979. That is the case. S.117(1)(e) of the Act provided that registration under the old Act continued under the new Act. This, Mr Nisbet submitted, that by implication, applying Scott v Jess (1984) 3 FCR 263 (HC), and also by proper application of the transitional provisions of the Industrial Relations Act, should be a reference to the Industrial Relations Act 1979 (s.117(1)(e)) which provided that registration under the repealed Act shall continue in force under and subject to this Act.

Firstly, even upon the sort of generous interpretation of union rules, which the authorities require, one could not say that the reference to the Industrial Arbitration Act 1912-1975 is applicable to rule 30, particularly since the Act was repealed, as Ms Smith submitted, nor can the transitional provisions preserve provisions which are inconsistent with the repealing Act or any new substituted Act or its provisions and amendments to them.

Firstly, therefore, the words "Subject to the provisions of the Industrial Arbitration Act, 1912-1975" mean that. They cannot be read to mean that the rule is subject to the Act. However, even if that were wrong and they could be read to mean "Subject to the Industrial Relations Act 1979 (as amended)" what does that mean? It means that rule 30 is a

nullity in the event of conflict and might as well not exist. It is difficult to apply the law relating to the use of the words "subject to" as it is enunciated in Pearce and Geddes "Statutory Interpretation in Australia" 4th Edition, page 19, because the law relates to how the phrase applies to conflicting provisions within one Act. However, it seems to me that the words "subject to" are of little consequence. The prescription of the rule is either inconsistent with the Act or it is not.

The rule unequivocally prohibits a member discontinuing his or her membership without giving three months previous written notice or paying three months contribution, or unless the member has paid all the dues payable to the union under its rules to the date on which the resignation takes effect, or unless he has obtained a clearance card under rule 31 which will only issue if all the dues payable to the union under its rules have been paid.

S.64A of the Act prescribes that when a member of an organisation gives written notice then the notice takes effect on the day on which it is served. In that rule 30 requires three months notice of resignation, without which there is no resignation, there is a great difference between rule 30 and s.64A.

S.64B of the Act prescribes that membership which expires and which is not renewed before expiry or within three months after the date of expiry, ends without any notice of resignation being necessary. Again, that differs from what rule 30 prescribes. Indeed, every requirement of rule 30 is different from s.64A and s.64B.

S.64C of the Act prescribes that they way of ending membership of an organisation set out in s.64A and s.64B are in addition to any ways of ending that membership already prescribed for. There is thus superimposed on the rules a provision which provides a method of termination not provided for in the rules if the rules do not already provide for it. In this case, it is not so provided for. Further, s.64C provides that the ending of membership of an organisation has effect despite anything in the rules of that organisation. Thus, no provision in the rules of an organisation different from, inconsistent with or contrary to s.64A or s.64B can effectively operate. However, notwithstanding s.64C of the Act, the Registrar has a mandatory duty as well to bring before the President any rule which is contrary to or inconsistent with s.64A or s.64B and that rule made in addition to the effect of s.64C upon it be disallowed.

What then does "contrary to" or "inconsistent with" mean? There were submissions put to us as to whether the notion "inconsistency" applied to a conflict between Commonwealth and State legislation should be used here or whether the notion of inconsistency applying to two conflicting statutes should apply.

Firstly, s.66(7) of the Act uses the words "contrary to" and the words "inconsistent with". However, as I have said, that only applies to the decision which the Registrar must make as to whether he brings the matter before the President. In s.66(2)(a) of the Act, however, the words "contrary to" and "inconsistent with" are used.

The words "contrary to" mean "**1.** opposite in nature or character ... **2.** opposite in direction or position. **3.** being the opposite one of two ..." (see The Macquarie Dictionary).

"Inconsistent" is referred to in those authorities which deal with inconsistency between Commonwealth and State laws, in particular in reference to s.109 of the Constitution and its operation. However, without going to the Constitution, the section should be interpreted by examining whether the rules in their terms purport to prescribe something which the Act forbids. If they do, they are inconsistent with and/or contrary to the sections. If the rules and the Act prescribe contradictory propositions, in other words, then the rules are both contrary to and inconsistent with the Act (see Suatu Holdings Pty Ltd v Australian Postal Corporation 86 ALR 532 (FC) per Gummow J). Alternatively, if the covering the field test is apposite, then, if the legislature has intended to provide an exhaustive code to the exclusion of rules of organisations, then it can be said to cover the field. If a direct inconsistency exists then the rule obviously comes within my jurisdiction. If, however, there is no direct conflict of duties inconsistency may still arise because the rule destroys or modifies a right, power or privilege conferred by the statute or conversely because a rule confers a right, power or privilege which the statute destroys or modifies. In such a case, the inconsistency does not arise out of the impossibility of obeying both the statute and the rules, but there is an inconsistency to the extent that the rules seek to restrain some activity authorised by the statute or authorise some activity which is forbidden by the statute (see Colvin v Bradley Bros Pty Ltd [1943] 68 CLR 151 (HC)). That is certainly a test which I would deem apposite in determining matters under s.66(2)(a) of the Act.

Rule 30, which pre-existed the legislation, has legal effect, for the reasons which I have stated. Rule 30 is mandatory in its terms and prohibits a member discontinuing his membership without giving three months notice in writing or without paying any dues owing or obtaining a clearance certificate (which he cannot obtain without paying any dues owing). Rule 30 therefore prohibits members from giving a lesser period of notice than three months, and it requires them to obtain a clearance, even if they give notice, and to pay all outstanding dues.

What s.64A and s.64B of the Act prescribe are methods of termination of membership which do not depend on the will of an organisation to enable them to take effect. The termination of membership occurs by the will and act of the member. Further, an act of resignation or a decision not to renew a subscription and thus membership is not prevented, trammelled or postponed because the member owes "dues" to the organisation. There is no conflict occasioned either because s.109 of the Act enables recovery in a court of competent jurisdiction by an organisation of fines, subscriptions or levies payable under its rules. That provision still enables their recovery and is not at all in conflict with s.64A and s.64B which confer the right to resign, unhampered by their owing dues, on members. Whatever test one applies the "covering the field" test or the "contrariety" test, namely that the rule is contrary to and inconsistent with s.64A and s.64B because it purports to extinguish or at least erode a right conferred by s.64A and s.64B, rule 30 is contrary to and inconsistent with both sections. What is directly prescribed for by rule 30 is obviously in conflict with and therefore inconsistent with or contrary to s.64A and s.64B which unequivocally prescribe for resignation or termination of membership to be at the will and by the act of the member. Rule 30 cannot be characterised as merely a resignation clause because it conditions and/or forbids resignation ((ie) the termination of membership) where dues are not paid by reference to its own terms and by reference to rule 31 and clearance cards. In other words, rule 30 delays and/or prevents resignations or terminations of membership to occur as the Act prescribes. The rule seeks to impose obligations which are directly opposed to those contained in s.64A and s.64B, and, in addition, which cannot have effect in the face of s.64C(2) of the Act.

I have referred to s.55(4)(f) of the Act which was repealed by Act No 79 of 1995 s.31, and which came into operation on 16 January 1996.

As I have said, s.51 of the Industrial Legislation Amendments Act 1995 came into operation on 9 May 1995.

Six months after that the Registrar was required to review the rules. He then, it was not in issue, formed an opinion that there was an inconsistency. It was submitted that the requirements of s.64B of the Act are in direct conflict with s.55(4)(f) of the Act. However, s.55(4)(f) was repealed before this application was made, and certainly before it was heard and determined. It is therefore irrelevant to consider whether s.55(4)(f) of the Act and s.64A and s.64B of the Act conflict. In any event, the section, as it stood, was not in conflict. It enabled the termination of membership who were in arrears with payment of dues. It did not inhibit or purport to inhibit a member resigning or failing to renew his/her membership as s.64A and s.64B, respectively, enable them to do.

However, for the reasons which I have mentioned above, the rules are plainly inconsistent with and contrary to s.64A and s.64B because they prescribe rights of resignation which are different to and which reduce and impinge upon the rights of resignation prescribed by s.64A and s.64B. Even if I were wrong in my interpretation of s.64A and s.64B, upon the ordinary rules of interpretation, I could resort to what the Minister said in the Second Reading Speech (see Hansard, page 10050, 20 December 1994). It is to be noted that under s.19 of the Interpretation Act 1984 (as amended) extrinsic material may be used (see s.19(1)(a)) to confirm that the meaning of the

provision is the ordinary meaning conveyed to the text of the provision taking into account its context in the written law and the purpose or object underlying the written law. In that Second Reading Speech the Minister said—

> "Resignation from unions: The current rules of many unions have been a frustration to those members who have wished to resign immediately without a financial burden being attached to that decision. Most unions' rules currently require three months' written notice or payment in lieu of notice in order to resign. Similarly, unfinancial members who have clearly demonstrated a lack of interest in maintaining their membership have been threatened with legal action to recover up to 12 months of unpaid dues, sometimes years after a person believed the membership to have expired. Provision is to be made to ensure that a person's membership of a union is automatically ended when that person remains unfinancial for a period of three months. The amendments will also provide for a person to resign in writing at any time without the need to give any notice."

That extract from Hansard (op cit) confirms the meaning of the provision as conveyed by the text of s.64A and s.64B of the Act and which is, as I have said, their ordinary meanings.

I must say that I have carefully considered all of the submissions made to me in reaching these conclusions.

However, having determined that the rule is inconsistent with and contrary to the Act, and, in particular, s.64A and s.64B of the Act, as I have decided, I must decide whether I should disallow the rule as s.66(2)(a) of the Act enables me to do, or whether instead of disallowing it I direct the respondent organisation to alter the rule within a time and in such manner as I may direct (see s.66(2)(b) of the Act).

No submission was made to the latter effect. Accordingly, I will declare that rule 30 of the rules of the respondent organisation is contrary to or inconsistent with s.64A and s.64B of the Act. I will disallow the rule as and from the date of these reasons herein, unless cogent arguments are advanced that I should direct the respondent to alter the rule. I will issue a minutes of proposed order reflecting these reasons, but such minutes are to be read subject to the right to make submissions that I should direct the rule to be altered rather than disallow it. Should the parties or either of them wish to make such submissions, they should notify my Associate within five days of 23 May 1996.

Order accordingly

Appearances: Ms J H Smith (of Counsel), by leave, on behalf of the applicant.

Mr P M Nisbet QC, by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Shop, Distributive and Allied Employees' Association of Western Australia
(Respondent).

No. 461 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

23 May 1996.

Order.

THIS matter having come on for hearing before me on the 1st day of May 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr P M Nisbet QC, by leave, on behalf of the respondent, and having reserved my decision on the matter, and reasons for decision being delivered on the 23rd day of May 1996 wherein I found that the application should be granted and gave reasons therefore, it is this day, the 23rd day of May 1996, ordered and declared as follows—

(1) THAT I declare that rule 30 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A and s.64B of the Industrial Relations Act 1979 (as amended).

(2) That rule 30 of the rules of the abovenamed respondent organisation be and is hereby disallowed as and from the 23rd day of May 1996.

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

[L.S]

AWARDS/AGREEMENTS—Application for—

ABB INSTALLATION AND SERVICE PTY LTD (WESTERN REGION) ENTERPRISE BARGAINING AGREEMENT.

No. AG 129 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Installation and Service Pty Limited

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. AG 129 of 1996.

ABB Installation and Service Pty Ltd (Western Region) Enterprise Bargaining Agreement.

CHIEF COMMISSIONER W.S. COLEMAN.

31 May 1996.

Order.

HAVING heard Ms S. Sanderson on behalf of the Applicant and Mr L. McLaughlan 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 ABB Installation and Service Pty Ltd (Western Region) Enterprise Bargaining Agreement be registered as an industrial agreement from the date hereof.

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

[L.S.]

Schedule.

ABB INSTALLATION AND SERVICE PTY LTD
(WESTERN REGION)

ENTERPRISE BARGAINING AGREEMENT

1.—TITLE

This Agreement will be known as the ABB Installation and Service Pty Ltd (Western Region) Enterprise Bargaining Agreement and will replace registered industrial agreement AG 180 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Application of Agreement
7. No Extra Claims
8. Objectives of Agreement
9. Dispute Procedure
10. Consultative Processes
11. Training
12. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13. Monitoring of Agreement
14. Wages
15. Date and Signatures

3.—PARTIES BOUND

This Agreement is made between ABB Installation and Service Pty Ltd (Western Region) (ABBIS) and the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch (Union).

4.—AREA AND SCOPE

Subject to clause 6 below, this Agreement applies to ABBIS, its employees who are members or eligible to be members of the Union employed in the classifications set out in Clause 14.—Wages below, and the Union and will operate within the State of Western Australia.

It is estimated that the number of employees who will be bound by this Agreement upon registration is 125.

5.—DATE AND PERIOD OF OPERATION

This Agreement will operate from 1 January 1996 and will remain in force until 31 December 1997 or its earlier cessation in accordance with subclause (2) of Clause 6.—Application of Agreement.

6.—APPLICATION OF AGREEMENT

(1) Where the parties to this Agreement are also parties to a written agreement which applies to a specific project or site, such specific project or site agreement, registered or unregistered the will apply in lieu of this Agreement.

(2) If it is agreed that meaningful productivity increases can be achieved, but this Agreement cannot be implemented in full, then wage increases available from this Agreement may be introduced on a "pro rata" basis. The increases available from this Agreement will be a maximum of those contained in Clause 14.—Wages.

(3) The parties agree that if, following a review of this Agreement by the parties and the Consultative Committee, it is agreed that this Agreement places and continues to place ABBIS and its employees at a competitive disadvantage, and/or productivity and flexibility have not improved then ABBIS has the option of reverting to work under the Electrical Contracting Industry Award R 22 of 1978 (Award).

(4) No part of this Agreement is to be used by the Union, ABBIS, or its employees as evidence or example before any industrial tribunal or proceedings not directly concerned with work covered under this Agreement.

(5) No part of this Agreement will be otherwise used by the Union, ABBIS, or its employees as evidence or example before any industrial tribunal or any other electrical contractor.

(6) If the Union is a party to a specific project of site agreement, which ABBIS is not a party to, and ABBIS undertakes work on that particular project or site, the specific project or site agreement will take precedence over this Agreement.

(7) Where a specific project or site agreement is applicable to work ABBIS are contracted to carry out, and ABBIS and the Union are not a party to that specific project or site agreement, it is agreed that the parties will discuss the application of this Agreement to that work.

(8) Where the parties are unable to agree upon the applicability or otherwise of this Agreement to the work both parties acknowledge the other party's legal rights to protect their respective interests.

(9) Both parties have the option of suspending this Agreement effective immediately, provided that the suspension will only extend to the application of this Agreement to the work on the specific project or site.

(10) Pursuant to this Agreement and its measures to achieve gains in productivity, efficiency and flexibility, ABBIS will provide the rates of pay prescribed in Clause 14.—Wages which will be paid in lieu of the minimum weekly rate provided for in the award.

(11) This Agreement will operate in conjunction with the Award. Where any inconsistency exists between this Agreement and the Award, this Agreement will take precedence to the extent of the inconsistency.

(12) The parties agree that registration of this Agreement in the Western Australian Industrial Relations Commission will not prejudice either the Union or ABBIS's right to claim, pursue and achieve an award or enterprise bargaining agreement in the Australian Industrial Relations Commission.

7.—NO EXTRA CLAIMS

(1) The employees and the Union agree to not pursue any extra claims in relation to the Award, with the exception of future State Wage Decisions, for the life of this Agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future safety net adjustment will be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this Agreement. Future safety net adjustments will not increase the wage rates contained at Clause 14.—Wages.

8.—OBJECTIVES OF AGREEMENT

(1) The parties acknowledge their commitment to the principles of enterprise bargaining.

(2) The parties agree that as a result of this Agreement, ABBIS need to achieve productivity improvements to continue to hold a competitive edge within the market place by:

(a) heightening awareness and acceptance of accountability levels of all in the contracting process within ABBIS's operations;

(b) encouraging ABBIS's employees to accept responsibility in helping manage the total project performance including that of subcontractors;

(c) developing concepts of best practice, continuous improvement and quality control to enhance productivity and efficiency;

(d) developing a co-operative and harmonious working environment in the enterprise;

(e) developing better employee management practices that promote shared concepts of skill formation, learning, teamwork, participation, flexibility and communication;

(f) introducing best practice procedures in workplace health and safety and personnel management;

(g) developing and following procedures to eliminate lost time and make better use of available working time, eg, start and finish at the designated workplace at normal start and finish times;

(h) establishing measures to ensure ordered relations exist between ABBIS and the union on ABBIS's work sites;

(i) enhancing job satisfaction;

(j) improving ABBIS's competitiveness to help improve job security.

(3) It is agreed that the measures in this Agreement, properly implemented and carried out, will assist in the achievement of those objectives.

9.—DISPUTE PROCEDURE

The Union undertakes to comply with the procedures continued in Clause 27.—Grievance Procedure and Special Allowance of the Award without exception when any dispute, disagreement or question relating thereto arises between the Union and ABBIS.

10.—CONSULTATIVE MECHANISMS

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this Agreement, are enhanced by genuine consultation between ABBIS and its employees.

(2) A Consultative Committee (Committee) may be established within ABBIS. The composition and size of Committee will be determined by the parties.

(3) The Committee will initially be chaired by ABBIS's Manager (Western Region) or nominee. A representative of the Union may attend meetings. A representative of the Electrical Contractors' Association of WA (ECA) may attend the meetings.

(4) The role of the Committee is to act as a forum for consultation, guidance and advice between ABBIS and its employees on matters such as monitoring and reviewing:

(a) implementation of this Agreement and its objectives;

(b) determination of benchmarks, best practice and continuous productivity improvement;

(c) the skills formation programme and ancillary train-

ing;

(d) the productivity improvement programme;

(e) communication between ABBIS and its employees;

(f) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(5) The Committee is a consultative and advisory group and it is recognised by all parties that final and overall accountability for company performance rests with ABBIS.

11.—TRAINING

(1) ABBIS acknowledge the changing pace of technology in the electrical contracting industry and the need for employees to understand those changes and have the necessary skill requirements to keep ABBIS at the forefront of the industry.

(2) The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of ABBIS, a commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(a) developing a more highly skilled and flexible workforce; and

(b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by ABBIS.

(3) It is agreed that a training programme be developed consistent with:

(a) the current and future skill needs of ABBIS;

(b) the size, structure and nature of ABBIS;

(c) the need to develop vocational skills relevant to ABBIS and the electrical contracting industry.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for ABBIS will be performed in accordance with this Agreement and with the Award as varied by this Agreement and in conjunction with, where applicable, other industry agreements.

(2) Flexibility of Hours, Breaks and RDO's

(a) It is agreed that employees will be flexible in the following areas:

(i) where it is agreed between ABBIS and the majority of affected employees ABBIS may reschedule ordinary working hours;

(ii) the spread of hours may be altered by agreement between ABBIS and the majority of employees in the plant or sections concerned;

(iii) agreement to reschedule ordinary working hours and to alter the spread of hours will not unreasonably be withheld;

(iv) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of ABBIS in conjunction with the provisions in subclause 11(1)(e) and (f)—Hours, of the Award;

(v) flexibility of rostering employees' days off.

(b) It is agreed that when ABBIS wish to reschedule an RDO, ABBIS will endeavour to provide reasonable notice to the employee or employees concerned. RDO's may be substituted by agreement in accordance with the Award, which agreement will not unreasonably be withheld.

(3) Maintenance of Workplace

All employees are committed to ensure their workplace is maintained in a clean and safe condition.

(4) Overtime

(a) Overtime will be worked in accordance with Clause 12—Overtime of the Award. In particular the employees agree to strictly adhere to subclause 12(2)(f)(i) and (ii)—Overtime, of the Award which states as follows:

"*(2)(f)(i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.*

(2)(f)(ii) The union party to this award, or employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause."

(b) Overtime may be worked on an RDO weekend as required by ABBIS. ABBIS will endeavour to give employees who are required to work on an RDO weekend such prior notice as is reasonable in all the circumstances.

(c) ABBIS will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at ABBIS's discretion, provided that this will not disadvantage ABBIS in any way.

(d) In conjunction with the roster system ABBIS will select the employees required to work overtime according to the needs of ABBIS and the particular project.

(e) When overtime has been scheduled and an employee has committed himself or herself to work overtime, such commitment must be honoured. Where an employee has a valid reason to be absent, in accordance with Award provisions, the employee must advise ABBIS as soon as possible prior to overtime commencement of that fact and the reasons therefore, so that alternative arrangements may be made.

(5) Shiftwork

Employees will work shiftwork in accordance with the provisions of Clause 13.—Shiftwork of the Award.

(6) Time Clocks

Employees will use time clocks or similar when ABBIS consider it to be appropriate for management and safety purposes.

(7) Staff use of Tools/Equipment

Employees accept that ABBIS staff may demonstrate techniques for the use of any tools or equipment.

(8) Safety Disputes

(a) Where an ABBIS employee is affected by a safety dispute an employee will comply with ABBIS instructions to either:

(i) continue work when the area in which the employee is working is not affected by the condition giving rise to the dispute; or

(ii) accept a transfer to work in an area of the site not affected by the condition giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with ABBIS instructions will agrees to forfeit wages for time not worked.

(9) Inclement Weather (Wet or Hot)

(a) Where an ABBIS employee is affected by inclement weather an employee will comply with ABBIS instructions to either:

(i) continue work when the area in which the employee is working is not affected by inclement weather; or

(ii) accept a transfer to work in an area of the site not affected by the inclement weather; or

(iii) accept a transfer from one site to another site not affected by inclement weather; or

(iv) leave the site without loss of pay.

(b) Where ABBIS requires an employee to traverse open ground ABBIS will provide the employee with protective clothing. Such clothing will remain the property of ABBIS and is to be returned to ABBIS. Employees will take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

(c) An employee is not deemed to be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.

(d) An employee who does not comply with ABBIS instructions agrees to forfeit wages for time not worked.

(10) All Other Disputes

(a) Where an ABBIS employee is affected by any other dispute an employee will comply with ABBIS instructions to either:

(i) continue work when the area in which the employee

is working is not affected by the condition, situation or grievance giving rise to the dispute; or

(ii) accept a transfer to work in an area of the site not affected by the condition, situation or grievance giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with ABBIS instructions agrees to forfeit wages for time not worked.

(11) Movement of Material

It is agreed that employees will, where reasonably safe to do so, and in compliance with WorkSafe's requirements, load and unload materials, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

(12) Daily Labour Reports

It is agreed that employees will take an active role in the production reporting and production strategy meetings by punctually and correctly filling in daily labour reports.

(13) New Technology/Training

It is agreed that employees will fully utilise all new technological advances and training implemented by ABBIS including, but not limited to, technological advances and training in relation to materials, methods, plant, equipment and quality assurance requirements.

(14) Work on Ladders

It is agreed that employees will work on ladders where they are required to do so and such work complies with the Occupational Safety and Health Act.

(15) Uniforms and Clothing

It is agreed that employees issued with ABBIS uniforms and clothing, will wear such items during all work hours and each employee will maintain his/her uniform/clothing in a respectable condition as approved by ABBIS.

It is agreed that employees who have been issued with clothing will have such clothing replaced on a fair wear and tear basis. There will be no automatic reissue of clothing where an employee is placed on a new site.

(16) Rest Period

(a) A rest period of 10 minutes will be allowed in accordance with the following:

(i) Subject to the provisions of this paragraph, a rest period of 10 minutes from the time of ceasing to the time of resumption of work will be allowed each morning.

(ii) The rest period is to be counted as time off duty without deduction of pay and will be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by an employee during the rest period but the period of 10 minutes is not be exceeded under any circumstances.

(iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.

(b) This arrangement may be altered to suit the convenience of ABBIS.

(c) Smoking is not permitted in ABBIS offices, including site offices, toilet facilities, lunchrooms, motor vehicles and other ABBIS facilities.

(17) Unauthorised Absences

(a) ABBIS will:

(i) arrange an employee's ordinary hours of work which to average 38 hours per week; and

(ii) select the method of implementation of the 38 hour week.

(b) An employee will present himself or herself for duty and remain on duty during the ordinary hours of work.

(c) ABBIS is under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with:

(i) the Award provisions; or

(ii) an instruction from ABBIS that the employee may leave site without loss of pay.

(18) Care of ABBIS Property

(a) It is agreed that employees will treat all property, plant and equipment owned or hired by ABBIS with due care and respect to ensure replacement is kept to a minimum. All property, plant and equipment is to be returned to the designated storage area each day.

(b) A tradesperson or apprentice is to replace or pay for any tools supplied by ABBIS if lost through his/her negligence.

(c) It is agreed that all employees are committed to reducing the cost of maintenance and minimising theft and time spent looking for equipment not returned to its designated storage area.

(19) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of ABBIS materials and consumables is achieved and will exercise due care and precaution to prevent wastage. All employees are committed to identifying further ways in which wastage can be reduced.

(20) Use of Expertise and Duties

(a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate licence to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licences when required to by ABBIS.

(b) Employees' duties will include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.

(21) Footwear

It is agreed that employees who have been issued with safety footwear will have such safety footwear replaced on a fair wear and tear basis. There will be no automatic reissue of footwear where an employee is placed on a new site.

(22) Company Vehicles

Where an employee is provided with the use of a company vehicle to conduct company business, that employee will ensure that:

(a) The vehicle is kept clean and free of rubbish.

(b) The vehicle's oil and fuel requirements are regularly checked to maintain the vehicle ready-for-use condition.

(c) Any defects that come to the employee's attention are reported to ABBIS immediately.

(23) Quality Management

It is agreed that employees will co-operate fully with the development and implementation of ABBIS quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by ABBIS. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(24) Co-operation Between Employees and Supervisors

(a) It is agreed that employees will assist in the management of efficiency and production of sites by advising the supervisory staff at the earliest available opportunity if:

(i) it is anticipated that a material shortfall may occur, and if a shortfall does occur;

(ii) faulty hand tools are on site;

(iii) production is likely to be delayed or is delayed by other trades;

(iv) work is not being installed in accordance with the specifications or with SAA Wiring Rules.

(b) Employees will take an active role to ensure that sufficient quantities and correct types of materials are available at the job site to maximise time at the workface.

(c) Employees will take an active role in tool box meetings to eliminate safety hazards.

(25) Client Satisfaction

(a) The employees will take an active role in ensuring client

satisfaction and acknowledge that client relationships are important to the growth of ABBIS and its ability to offer continuing employment to its employees. All employees agree to treat customers with courtesy and respect and to consider the customers' interests in their actions.

(b) ABBIS and its employees recognise that a commitment to complete the project work on time and on budget is essential to the ongoing viability of the company and the prospects of long term employment of employees.

(26) Injured Workers' Rehabilitation

ABBIS is actively involved in ensuring any injured employee is rehabilitated back into the workforce at the first reasonable opportunity. To ensure this policy is maintained, employees who suffer an injury in the workplace may be required to consult a medical practitioner nominated by ABBIS. This provision will not prevent an employee from consulting with and being treated by his/her own personal medical practitioner in the first instance.

13.—MONITORING OF AGREEMENT

The parties to this Agreement will continually monitor the development of the agreement and will review the effect of this Agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this Agreement places them at a disadvantage then the parties will reconvene to resolve the issue.

14.—WAGES

(1) The following weekly wage rates will apply from the first full pay period to commence on or after 1 January 1996, subject to the registration of this Agreement in the Western Australian Industrial Relations Commission and the successful implementation of the principles contained within this document.

	Beginning of 1st full pay period to commence on or after 1/1/96	Beginning of 1st full pay period to commence on or after 1/7/96	Beginning of 1st full pay period to commence on or after 1/1/97	Beginning of 1st full pay period to commence on of after 1/7/97
Electrical Installer	$542.43	$562.77	$583.87	$605.77
Electrical Fitter	$542.43	$562.77	$583.77	$605.77
Electronics Tradesperson	$636.71	$660.59	$685.36	$711.06
Electrician Special Class	$570.06	$591.44	$613.62	$636.63
Instrument Fitter/Electrician Grade 2	$578.84	$600.55	$623.07	$646.43
Instrument Fitter/Electrical Grade 1	$562.51	$583.60	$605.49	$628.20
Linesperson Grade 1	$542.43	$562.77	$583.87	$605.77
Cable Jointer	$542.43	$562.77	$583.87	$605.77
Linesperson Grade 2	$521.88	$541.45	$561.76	$582.82
Electrical Assistant	$459.59	$476.83	$494.71	$513.26
Apprentices				
1st Year	$211.55	$219.48	$227.71	$236.25
2nd Year	$276.64	$287.01	$297.78	$308.94
3rd Year	$363.43	$377.06	$391.19	$405.87
4th Year	$428.52	$444.59	$461.26	$478.56

(2) Apprentices will be paid wages at the appropriate percentage shown in the Award, ie. 39%, 51%, 67%, 79%, of the Electrical Installer's rate referred to in subclause (1) of Clause 14.—Wages.

17.—DATE AND SIGNATURES

FOR AND ON BEHALF OF ABB INSTALLATION AND SERVICE PTY LTD (WESTERN REGION).

P.J. Bowey

.....

P J BOWEY

MANAGER—WESTERN REGION

Surene Sanderson

.....

WITNESSED

14/5/96

.....

DATE

THE COMMON SEAL OF THE COMMUNICATIONS, ELECTRICAL, ELECTRONICS, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED WORKERS' UNION OF AUSTRALIA, ENGINEERING AND ELECTRICAL DIVISION, WA BRANCH was hereto affixed in the presence of:

P. Carter

.....

SIGNED

W.E. Game

.....

WITNESSED

15/5/96

..... Affix Seal

DATE

ABB TRANSMISSION AND DISTRIBUTION LIMITED, DISTRIBUTION TRANSFORMERS DIVISION, WA OPERATIONS (ENTERPRISE BARGARINING AGREEMENT 1996)
No. AG 122 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Transmission & Distribution

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

No. AG 122 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

13 May 1996.

Order.

HAVING heard Mr S. Foy on behalf of the Applicant and Mr G. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr J. Fiala 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 following schedule titled the "ABB Transmission and Distribution Limited, Distribution Transformer Division, WA Operations (Enterprise Bargaining Agreement 1996)" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 9th day of May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be referred to as the ABB Transmission and Distribution Limited, Distribution Transformer Division, WA Operations (Enterprise Bargaining Agreement 1996).

2.—ARRANGEMENTS

This agreement is arranged as follows—

Clause Subject Matter
1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Date and Period of Operation
5. Relationship to Parent Award
6. Single Bargaining Unit
7. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
8. State Standards
9. Avoidance of Industrial Disputes
10. Wage Increase and Achievement of Overall Targets
11. Not to be Used as a Precedent
12. Renewal of Agreement
13. Signatories to the Agreement

3.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to—

All employees and to persons who are members of or eligible to be members of organisations named in subclause (2)(b) and who are employed at the 429 Scarborough Beach Road, Osborne Park site in any of the classifications set out in Clause 10—Wage Increase.

(2) The parties to this agreement shall be—

(a) Employer Party

ABB Transmission and Distribution Limited ACN 000 169 568,

429 Scarborough Beach Road, Osborne Park W.A. 6017 (ABB).

(b) Organisations representing employees

Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electronic Division, Western Australian Branch (CEPU).

Automotive, Food, Metals, Engineering, Printing, Kindred Industries Union of Workers WA Branch (AMWU).

(3) This agreement covers approximately ninety employees.

(4) The parties to this Agreement expressly accept that they are bound by the Terms of this Agreement throughout its duration and shall oppose any application by any other parties to be joined to this Agreement.

4.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate on and from the date the Agreement is registered by the Western Australian Industrial Relations Commission and shall remain in force until 10 March 1998.

(2) The parties shall continue to monitor the application of this Agreement to ensure the effective implementation of structural efficiency and enterprise bargaining.

(3) This Agreement shall be reviewed prior to expiry as outlined in Clause 12—Renewal of Agreement.

5.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966, Part I, provided that where there is any inconsistency this Agreement shall take precedence to the extent of the inconsistency.

(2) The parties to this Agreement will comply with its terms notwithstanding the provisions of any award, order or industrial agreement to which they are otherwise bound.

6.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a single bargaining unit, namely an Enterprise Bargaining Committee.

(2) Enterprise Bargaining Committee

This Committee was set up in February 1993 and comprises the, Plant Manager, Training and Safety Officer, Shop Steward and elected representatives from the electrical and fabrication departments.

This Committee has held negotiations and reached full agreement on the terms of this Agreement.

7.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

This Agreement builds on previous agreements and is based on achieving further improvement and real demonstrable gains in Quality, Workplace Health and Safety, Productivity, Efficiency and Flexibility.

(1) Communication

Two-way communication between departments and between management and employees will be maintained via—

(a) Quarterly management report back meetings with all employees,

(b) Monthly toolbox meetings conducted by Supervisors, the Training & Safety Officer and Foremen,

(c) The Enterprise Consultative Review Committee via monthly meetings will monitor the necessary actions under this Agreement. This committee will comprise of the Plant Manager, the Training & Safety Officer, Production Technician, Supervisory representative and up to six elected employees (including the principal Union Shop Steward) from factory departments. This committee may request 'expert' representation as required when specific issues need addressing.

(2) Flexible Work Practices

(a) Labour flexibility through broader job definitions, this includes, but is not limited to—

(i) Production employees within their skill, competence and training are responsible for the quality and inspection of their own work. This includes checking off and signing the bar coded job card attached to each job and recording rework on the back thereof. More extensive quality compliance checklists will be implemented and actioned (as in Final Assembly) for the preceding processes.

(ii) Production employees will be involved in writing and maintaining Departmental Quality Operating Procedure documents in line with the Company's Quality Policy.

(iii) Foremen attending weekly meetings maintaining production flow within their Department in accordance with the factory schedule, recording and graphing relevant performance indicators.

(iv) Leading Hands actioning production requirements under the direction of the Foremen and Supervisors.

(v) General and routine maintenance to be done by operators including repairs, maintenance and cleaning of equipment, fixtures, buildings and floors. Employees will be supervised or directed on tasks to be done within their skill, competance and training.

(b) Flexibility with non-award staff—

(i) No restriction shall be placed upon Foremen and Supervisors working to overcome temporary labour shortfalls where appropriate. This will be a temporary measure only to be used in emergency situations. It is accepted that the Foremen's or Supervisors' prime responsibility is to organise and facilitate the manufacturing process and not to displace employees from existing jobs.

(ii) No restriction shall be placed upon Purchasing staff performing normal store unloading, receipt, storing and issuing functions where appropriate to overcome temporary labour shortfalls. This will be a temporary measure to be used in emergency situations.

(iii) No restriction shall be placed upon Plant/Manufacturing Engineers and Technicians assisting on any repair or project work in the factory in line with their skills and in conjunction with the Plant Maintenance Department where appropriate.

(iv) No restriction shall be placed upon Engineers working on the development and testing of prototype units and "one off" designs. This may also include solving manufacturing problems, providing support for manufacturing computer systems and the development of manufacturing procedures.

(v) Non-award staff performing the foregoing functions shall only carry out work commensurable with the individual's qualifications and training and only after obtaining any appropriate licences or permits that may be required.

(c) Flexibility through job sharing—

(i) The Company and employees have embarked upon a programme to train and retrain employees to achieve a multiskilled workforce to enable them to complete a series of functions within the factory. This has to date included, but is not limited to—

(a) Where manpower levels fall below planned capacity allocated to a department, operators from other departments may be utilised in that department to perform work commensurable with their level of skill and training. Where individual skill or training levels are inadequate, supervision shall be provided by the Leading Hand or suitably trained operators.

(b) More flexibility will be achieved consistent with the rate at which proper training can be extended to operators.

(d) Flexibility by using Agreement facilitative provisions as follows—

(i) The spread of hours from 6.00 a.m. to 6.00 p.m. will be more extensively utilised in the event of machine maintenance, product mix or peak work loads to ensure adequate production from critical machines, for example winding machines, core cutting line and the CNC turret punch.

Any arrangements utilising the spread of hours will be agreed, before implementation, between management and operators involved in these operations. Where possible and practical, the Enterprise Consultative Review Committee will assist in planning optimum spread of hours.

(ii) In view of the present market condition of reduced lead times, it may be necessary to realign factory annual leave to suit customer requirements. To facilitate this requirement, annual leave may be taken at different times of the year for different operators and/or departments. Adequate notice will be provided whenever leave taking is to be advanced or delayed.

When leave has been approved and the employee had made commitments (after this approval) regarding his/her holiday, e.g. travel bookings, then that leave approval will not be rescinded.

Every effort will be made to provide a minimum of four (4) weeks notice of requirement to take leave.

(3) Employee Involvement

Some employees at ABB Osborne Park have been trained and involved in E.I. (Employee Involvement) activities such as Quality Circles, JIT Just-In-Time), VAM (Value Added Management), TBM (Time Based Management), TQM (Total Quality Management), Task Forces and SGIA's (Small Group Improvement Activities) in past years.

Employee involvement will continue as part of the Company's TQM—Customer Focused Quality Programme and will focus on—

(a) Customer service—both internal and external

(b) Continual and incremental improvement in Throughput Time and Standard Hours Reduction

(c) Reduction in rework, scrap and waste

(d) Improvement in On-time Delivery

(e) Productivity Improvement Projects to improve quality and output without increasing costs

(4) Training

The Training and Safety Officer, along with the supervisory staff (Superintendent, Supervisors, Foremen and Leading Hands) will implement and monitor both on the job and accredited training and to develop structured career paths for all award staff. It is the intent of this Employer that opportunities will be made available for multiskilling and competency based career paths and the following procedure shall be adopted when determining training—

(a) As part of the process of managing the business, the Plant Manager and/or Supervisors shall identify the need for additional trained operators.

(b) Where trainees cannot be readily identified within the work centre, expressions of interest will be sought from other work centres and outside the Company.

(c) Upgrading of employees, e.g. from C13 to C12, shall occur when two conditions can be met; the Company has a need for a higher skilled employee; and the employee has gained the necessary skills and qualification.

Training to support Items 7(4) (a), 7(4) (b) and 7(4) (c) will be provided on an "as needs basis" and production employees will continue to undergo training in the following areas—

(i) Customer Service

(ii) TQM

(iii) Quality Policy

(iv) On-the-job and Technical Training

(v) Health and Safety Training

The extent and type of training provided at 7(4) (iv) will be identified by the Company in consultation with the Enterprise Consultative Review Committee.

Training will be provided either "in-house" or via recognised training providers; e.g. AIM, TAFE and where appropriate shall be in accordance with National Training Standards.

(5) Workplace Health and Safety

ABB prides itself in providing a safe working environment. Safety awareness is a daily job prerequisite and requires Management and Employees to monitor activities within the company.

To this end, the "Employee Conditions Of Employment Handbook" issued to all employees encompasses all aspects of providing a safe environment.

(6) Performance Indicators and Productivity Measures

The Company records and displays a number of KPI's (Key Performance Indicators). These can be divided into three broad groups—

(a) Overall Company performance measures applicable to the business. These measures are reported and explained at quarterly meetings referred to under 7(1) (a).

(b) Improvement measures for each function of the Company, i.e. Manufacturing, Planning, Accounts, Engineering and Sales.

Examples of improvement measures for Manufacturing include, but are not limited to—

(i) Production Flow

(ii) Total Attendance

(iii) Total Overtime

(iv) Throughput Time

(v) Overall Factory Efficiency

(vi) Direct Labour Productivity

(vii) Rework Hours

(viii) Scrap Material

(ix) Test Failures

(x) Lost Time—Safety

(c) Improvement measures for each manufacturing work centre include,

(i) WIP (Work in Process)

(ii) Efficiency

(iii) Throughput Time

(d) The Enterprise Bargaining Agreement Improvement Measures consists of six performance indicators which can be controlled by manufacturing employees whom can therefore directly influence the desired outcome. Data for calculation of the measures shall be taken from the company's Monthly Operating Report, Payroll records and data collected from the Training & Safety Officer, Quality representative, Manufacturing and Marketing databases. These include the following (along with the calculation format),

(i) **Production Rework (PR)**

Manufacturing related rework is a measure of performance and an indicator of the degree of

control over processes, equipment, the correct use of materials and suitably trained operators.

$$\text{Rework} = \frac{\text{Hours costed to D16 (manufacturing rework)}}{\text{Actual hours worked}} \times 100$$

(ii) **Test Failures (TF)**

Manufacturing related test failures is a measure of product quality non-conformance and an indicator of the degree of control over processes, equipment, the correct use of materials and suitably trained operators.

Reduction in manufacturing related test failures, will ultimately assist in the improvement process of, Production Rework, On Time Delivery and Labour Efficiency.

$$\text{Test Failures} = \frac{\text{Total failures—Engineering non-conformance}}{\text{Number units tested}} \times 100$$

(iii) **On-Time Delivery (OTD)**

On-time delivery, where all resources (ie. labour, material, equipment and information) are available, directly relates to performance and indicates the degree of control over processes, equipment, operator training and correct use of materials. On-time delivery forms one of the measures of the TQM elements, "Customer Focus".

$$\text{On-time Delivery} = \frac{\text{Units delivered to customer contract date}}{\text{Units shipped for month}} \times 100$$

(iv) **Labour Efficiency (LE)**

Factory labour efficiency directly relates to the performance of all employees engaged in the manufacturing process and ultimately will affect the improvement process.

$$\text{Labour Efficiency} = \frac{\text{Standard hours completed}}{\text{Actual hours worked}} \times 100$$

The following process will be used in an endeavour to maintain the validity and accuracy of standard hours—

(a) New product styles will be allocated standard hours by the Production Planner based on previous similar styles and the technical information provided by Engineering, Supervisors, Foremen and Leading Hands. If these initial estimates are found to be inaccurate through the process of audit, they may be reviewed by the Enterprise Consultative Review Committee and if appropriate, adjusted.

(b) When a process is changed such that the work content requires a significant revision of the Quality Operating Procedure (QOP) then that revision will be reviewed by the Enterprise Consultative Review Committee to establish the need for a revision to standard hours and the extent of that revision. This Clause shall also take into account when the Company invests in new equipment for which a QOP does not exist.

(v) **Absenteeism (AB)**

Total absenteeism directly relates to performance and ultimately will affect the expected outcomes of the other productivity measures.

$$\text{Absenteeism} = \frac{\text{Total absentee hours (sick, unpaid)}}{\text{Total worked + Total absentee hours (Total Potential Hours)}} \times 100$$

(vi) **Lost Time Injuries (LTI)**

Lost time injuries directly relates to activities performed by employees. Employees can directly affect this measure by ensuring safe working practices are followed, hazards identified and Duty of Care exercised towards all employees.

$$\text{Lost Time Injury} = \frac{\text{Total hours lost}}{\text{Total worked + Total hours lost (Total Potential Hours)}} \times 100$$

(e) Productivity Index (PI)

The parties bound by this Agreement are all committed to achieving a continuing increase in **Productivity Index (PI)** as outlined in Table 1.

Improvements in productivity shall be determined by calculating the improvement in performance of the six measures and defined as follows—

filename:EBA.WK4	Prod'n Rework	Labour Efficiency	Absentee (less WC)	Lost time Injury	On-time Delivery	Test Failure	Total
Base Percentage 1995 (%)	2.05	77.40	2.60	1.73	86.46	4.05	Blank
2% Payment Model							
Target Value (%)	**1.50**	**78.60**	**2.45**	**1.56**	**90.00**	**3.30**	Blank
Period To Date (%)						**0.00**	Blank
Improvement from Base (%)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Weighting Factor	1.00	1.00	1.00	1.00	1.00	1.00	6.00
Target Productivity Index (PI)	0.33	0.33	0.33	0.33	0.33	0.33	2.00
Achievement of Target	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Current Productivity Index (PI)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3% Payment Model							
Target Value (%)	**1.20**	**81.00**	**2.15**	**1.38**	**93.33**	**1.80**	Blank
Period To Date (%)						**0.00**	Blank
Improvement from Base (%)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Weighting Factor	1.00	1.00	1.00	1.00	1.00	1.00	6.00
Target Productivity Index (PI)	0.50	0.50	0.50	0.50	0.50	0.50	3.00
Achievement of Target	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Current Productivity Index (PI)	0.00	0.00	0.00	0.00	0.00	0.00	0.00

TABLE 1

Targets for Productivity Improvement. (Measured on 6 month period)

Measure	Current	09/09/96	09/09/97	09/03/98
Rework	2.050%	1.500%	1.200%	1.000%
Test Non-conformance	4.050%	3.300%	1.800%	1.000%
On-time Delivery	86.40%	91.67%	93.34%	95.00%
Labour Efficiency	77.40%	78.60%	81.00%	82.00%
Absenteeism	2.600%	2.450%	2.150%	2.000%
Lost Time Injuries	1.730%	1.550%	1.375%	1.315%

Data for calculation of the measures shall be taken from the Company's Monthly Operating Report. In the event that a performance level more favourable than the agreed total improvement target is achieved and sustained during this Agreement, the Enterprise Bargaining Committee shall take into consideration the level of over-achievement when formulating the targets for a subsequent Agreement.

Where the Enterprise Consultative Review Committee can demonstrate that targets would be unfavourably impacted due to circumstances beyond the employees control (eg, rework caused by subcontractors) then that part which can be specifically identified will be assessed and if appropriate excluded from the measurement criteria.

(f) Initiatives to Support Achievement of Targets—

(i) Undertaking training modules for critical processes.

(ii) Undertaking training modules on Occupational Health and Safety in the workplace.

(iii) Review of critical equipment to gauge performance and future upgrades where necessary.

(iv) Feedback on design related issues by Small Group Involvement Activities (SGIA's), design reviews and creation of Quality Operating Procedures for the Design Office by the Production Technician.

(v) Co-ordination of purchased and manufactured

component availability to ensure on-time delivery to work centres.

(vi) Representatives from a cross section of the Company on the Employee Consultative Review Committee.

(7) Benefits Gained from Productivity, Efficiency and Flexibility Actions and Measures—

(a) The Company is able to concentrate labour into areas of maximum benefit to decrease throughput time and avoid "end-of-month" rush.

(b) Increased production output from equipment that has traditionally caused a "bottle-neck", e.g. core cutting.

(c) More efficient use of labour within the employee's level of skill and competence, as a result of multi-skilling through training and retraining.

(d) Commitment to "Customer Focused Quality" by all employees will enhance our ability to obtain orders and maintain customer base.

(e) Continuation of employee involvement in production areas will lower production costs through productivity improvements and reduction of rework, scrap and waste.

(f) Reduction of ad hoc absenteeism and a focus on overall labour efficiency will reduce the labour content of the Company's product and improve its competitive position.

(g) Training provided in accordance with 7(4) will increase the skills and knowledge of employees resulting in lower rework levels, lower accident rates and improvement in product quality.

8.— STATE STANDARDS

This Agreement shall not operate so as to cause an employee to suffer a reduction be it in ordinary time earnings or in state standards such as standard hours of work, annual leave or long service leave.

9.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement shall observe the procedure under the present Award for avoidance of industrial disputes as outlined in Metal Trades (General) Award 1966, No. 13 of 1965 Part I, Clause 34.

10.—WAGE INCREASES AND ACHIEVEMENT OF OVERALL TARGETS

(1) Wage Increases are payable as follows—

CLASSIFICATIONS Metal Grades (General) Award 1966 No. 13 of 1965	Col 1 Ent. Barg. Inc.	Col 2 Ent. Barg. Inc.	Col 3 Ent. Barg. Inc.	Col 4 Ent. Barg. Inc.
C5 Advanced Engineering Tradesperson Level II	3.0%	2.0%	2.0%	3.0%
C6 Advanced Engineering Tradesperson Level I	3.0%	2.0%	2.0%	3.0%
C7 Engineering Tradesperson Special Class Level II	3.0%	2.0%	2.0%	3.0%
C8 Engineering Tradesperson Special Class Level I	3.0%	2.0%	2.0%	3.0%
C9 Engineering Tradesperson Level II	3.0%	2.0%	2.0%	3.0%
C10 Engineering Tradesperson	3.0%	2.0%	2.0%	3.0%
C11 Engineering Production Employee Level IV	3.0%	2.0%	2.0%	3.0%
C12 Engineering Production Employee Level III	3.0%	2.0%	2.0%	3.0%
C13 Engineering Production Employee Level II	3.0%	2.0%	2.0%	3.0%
C14 Engineering Production Employee Level I	3.0%	2.0%	2.0%	3.0%
PRODUCTIVITY INDEX	**N/A**	**2.0**	**N/A**	**3.0**

(2) The wages increases in subclause 10(1) shall be payable as follows—

(a) Wages in the specified classifications in (1) above shall be increased by the percentage figure shown in column 1 and shall be payable from the beginning of the first pay period to commence on or after the 9 March 1996.

(b) Wages in the specified classifications in (1) above shall be increased by the percentage figure shown in column 2 and shall be payable from the beginning of the first full pay period to commence on or after the 9 September 1996 subject to achievement of the agreed overall target for the productivity measures as defined in Table 1, clause 7(6)(e).

(c) Wages in the specified classifications in (1) above shall be increased by the percentage figure shown in column 3 and shall be payable from the beginning of the first full pay period to commence on or after the 9 March 1997.

(d) Wages in the specified classifications in (1) above shall be increased by the percentage figure shown in column 4 and shall be payable from the beginning of the first full pay period to commence on or after the 9 September 1997 subject to achievement of the agreed overall target for the productivity measures as defined in Table 1, clause 7(6)(e).

(3) Substantial Progress Towards Achievement of Overall Target—

(a) Substantial is defined as achieving a minimum of two-thirds or more of the agreed overall target detailed in Clause 7(6)(e) and with the trend going in the right direction.

(b) If the overall target value is not achieved, but meets the substantial progress criteria defined in (a) above, then pro-rata payment will be made. The balance of the increase is payable after the first pay period following the month of achievement.

In the event of the target or substantial progress towards the target not being achieved, then payment will be delayed until the target is achieved. Payment increase will become effective after the first pay period following the month of achievement of the target.

(4) Application of Wage Increases in subclause 10(1)—

(a) The wage increases referred to in subclause 10(1) of this clause shall not be absorbed into any over-award payment.

(b) Increases provided for in Columns 1, 2, 3 & 4 are calculated on the existing base rate paid and over award rates. The payment increases do not apply to Metal Trade (General) Award allowances ie. leading hand, first-aid, tool, licence allowances etc.

(c) There shall be no further wage increases for the life of this Agreement except when consistent with a State Wage Case decision.

(5) Liberty to Apply

(a) The employer (in consultation with the parties bound by the Agreement) will discuss, evaluate and where appropriate trial a revised company specific classification structure based on sub levels between each non trade classification level beyond C12.

(b) Rates of pay which may be attached to this revised structure will be determined prior to implementation of the trial.

11.—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.

12.—RENEWAL OF AGREEMENT

The parties shall continuously monitor the application of this Agreement to ensure the effective implementation of structural efficiency and enterprise bargaining.

Notwithstanding the above, Clauses 6 to 12 inclusive of this Agreement shall cease to have effect from 10 March 1998.

Two months before the expiry of this Agreement, the Enterprise Bargaining Committee will review the performance of the Agreement and may—

(a) Commence working toward renewing the Agreement if performance has been satisfactory

(b) Jointly seek further productivity improvement opportunities to form the basis of a New Agreement

(c) Cancel the Agreement

13.—SIGNATORIES TO THE AGREEMENT

We the members of the Enterprise Bargaining Committee at ABB Transmission and Distribution Limited, Osborne Park, acting for and on behalf of employees at the above location covered by Metal Trades (General) Award 1966, Pt. 1—General; hereby agree to implement the conditions and measures contained in the foregoing documents known as the ABB Transmission and Distribution Limited, Distribution Transformer Division, WA Operations (Enterprise Bargaining Agreement 1996).

Furthermore, we agree to monitor and review performance against targets contained in the above document for the term of the agreement.

This agreement is made following consent expressed by the above employees on 9 March 1996.

.....	.....	.....
K. G. NIEBIESZCZANSKI SHOP STEWARD (CEPU)	P. TAYLOR EMPLOYEE REPRESENTATIVE	J. FIALA (Seal Affixed) UNION ORGANISER (CEPU)
.....	.....	.....(seal affixed.....
C. CARR EMPLOYEE REPRESENTATIVE	G. DOHERTY EMPLOYEE REPRESENTATIVE	J. SHARP-COLLETT STATE SECRETARY(AMWU)
.....	.....	.....
B. C. OAKES WA OPERATIONS MANAGER	V. GERGINIS WA PLANT MANAGER	A. STAFFORD (Seal Affixed) TRAINING & SAFETY OFFICER
	.....	.....
	G. L. JONES GENERAL MANAGER	D. PITT(Seal Affixed) MANAGING DIRECTOR

The Seal of ABB Transmission & Distribution Limited was hereunto affixed by the authority of the Board in the presence of :

.....
SECRETARY

AIR DRILL ENTERPRISE AGREEMENT 1996
No. AG 79 of 1996.

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

Air Drill.

No. AG 79 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

10 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr P. King 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 following schedule titled the "Air Drill Enterprise Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 17th day of April 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Air Drill Enterprise Agreement 1996 and shall replace AG 199 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application and Incidence of Agreement
4. Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Objectives
8. Continuous Improvement
9. Training
10. Dispute Settlement Procedure
11. Wages
12. No Extra Claims
13. Journey Cover
Signatories to Agreement

3.—APPLICATION AND INCIDENCE OF AGREEMENT

This Agreement shall apply at the establishment of Air Drill, 27 Jackson Street, Bayswater, Western Australia and the thirty (30) employees of Air Drill to whom the following Award applies—

Metal Trades (General) Award 1966 No. 13 of 1965.

4.—PARTIES BOUND

(1) Air Drill,
27 Jackson Street
Bayswater W.A. 6053

(2) The Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union—
Western Australian Branch (AMWU),
1111 Street,
West Perth. W.A. 6005.

5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate from the first pay period to commence on or after 1st February 1996 and remain in force until 31st December 1996. Two months prior to its expiry, the parties shall meet to negotiate a new Agreement.

(2) In the event of a replacement Agreement not being negotiated, this Agreement shall remain in force in accordance with the provisions of the Western Australian Industrial Relations Act 1979.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 No. 13 of 1965, provided that where there is any inconsistency between the two documents, this Agreement shall prevail.

7.—OBJECTIVES

(1) The parties agree, with consultation as well as the improved quality of employment and productivity, the competitive position of the Company and its long-term growth will be gained.

(2) Short Term Objectives—

(a) To increase productivity and efficiency.

(b) A commitment to continuous improvement.

(c) To increase awareness and responsibility to quality.

(d) To be more responsive to the needs of employees.

(3) Long Term Objectives—

(a) To enhance the culture and attitudes of all employees, thus creating a sense of 'belonging' to the Company.

(b) To increase the skill levels of all employees enabling them to utilise opportunities for career paths.

(c) To increase competitiveness.

(d) To improve job satisfaction.

8.—CONTINUOUS IMPROVEMENT

The parties to this Agreement are committed to becoming actively involved in the continuous improvement process.

9.—TRAINING

(1) The parties to this Agreement accept that in order to meet changes in technology, equipment and work patterns, a training policy must be adopted by consultation.

(2) Such a policy could comprise, but not be limited to, courses offered being accredited and conducted during normal working hours, wherever possible.

(3) It is agreed that by mutual agreement with an apprentice concerned, training outside of ordinary hours may occur at single time.

10.—DISPUTE SETTLEMENT PROCEDURE

(1) In the interests of resolving questions, disputes or difficulties quickly and with as little disruption as possible, any matter likely to lead to a dispute should be raised firstly with the Shop Steward on site and, if necessary, a Union Organiser.

(2) In the event that the matter cannot be resolved in-house, the assistance of the Western Australian Industrial Relations Commission shall be sought.

11.—WAGES

The following rates shall apply—

(1)

Classification	Rate per hour	Weekly Rate
C 10	$14.67	$557.48
C 12	$12.80	$486.58
C 13	$12.11	$460.00

(2) Service Pay—

In addition to the rates referred to in subclause (1) hereof, employees shall receive the following service pay for all purposes of the Award—

	Per Week $
After Service of—	
One year	5.00
Two years	10.00
Three years	15.00
Four years	20.00
Five years	25.00

(3) Attendance Bonus—

(a) An additional $10.00 per week shall be paid to each employee by way of an attendance bonus.

(b) This allowance will not be paid in any week where an employee has not attended work for two hours or more and shall not be paid to employees while they are on annual leave.

12.—NO EXTRA CLAIMS

There shall not be any further wage increases claimed for the life of this Agreement.

13.—JOURNEY COVER

The employer will provide employees with journey insurance cover for lost wages in the event of an accident while travelling to and from work and shall include death and disability cover up to $100,000. Per terms and conditions of our insurance policy number 05pd.002689.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of Air Drill—.....

Ralph King

12/3/96.

For and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch— .....

J. Sharp-Collett (Seal affixed)

12/3/96.

B & R PAVING INDUSTRIAL AGREEMENT.

No. AG 126 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Bruno and Elvira Carbone and Sandra and Ross Serafino trading as B & R Paving.

No. AG 126 of 1996.

B & R Paving Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 B & R Paving Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the B & R Paving 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Bruno and Elvira Carbone and Sandra and Ross Serafino trading as B & R Paving (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award"). This Agreement will not apply on work where less than five dwelling units are being constructed. It also does not apply on projects which have a contracted value of not less than $284,000.

(2) There are approximately three employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 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—Wage Rates.

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 inability 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 subclause (2) of this clause 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.

(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 signing 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Bruno Carbone
Ross Serafino

On behalf of B & R Paving

Dated this 1st day of May 1996.

APPENDIX A—WAGE RATES

	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

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs:

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

BP REFINERY KWINANA CMETU EMPLOYEES AGREEMENT 1996.

No. AG 85 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

BP Refinery (Kwinana) Pty Ltd.

No. AG 85 of 1996.

BP Refinery (Kwinana) Pty Ltd Agreement 1996.

COMMISSIONER R.N. GEORGE.

24 May 1996.

Order.

HAVING heard Ms D. MacTiernan on behalf of the Applicant and Ms V. Sheridan on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the BP Refinery (Kwinana) Pty Ltd Agreement 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 1 January 1996.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the BP Refinery Kwinana CMETU Employees Agreement 1996 and replaces the "BP Refinery Kwinana Pty Ltd Site Agreement 1994".

1A.—ARRANGEMENT

1. Title
1A. Arrangement
2. Intent
3. Incidence and Scope of Award Modernisation

4. Date and Period of Operation
5. Classification
6. Terms of Employment
7. Remuneration—Annualised Salary
8. Skills Level Progression
9. Training and Education
10. Safety and Environment
11. Quality
12. Holidays
13. Hours of Work
14. Annual Leave
15. Long Service
16. Sick Leave
17. Bereavement Leave
18. Compassionate and Special Leave
19. Jury Service
20. Safety Clothing
21. Tools & Equipment
22. Union Delegate
23. Grievance Procedure
24. Work Group Meetings
25. Agreement Review
26. Staffing
27. Shift to Day Secondments
28. No Extra Claims
29. Estimated Number of Employees Bound by the Agreement upon Registration

Appendix 1—Career Path Structure
Appendix 2—Salary Definition
Appendix 3—12 Hour Shift Roster Conditions
Appendix 4—Staffing Strategy
Appendix 5—ERG Agreement
Appendix 6—Process Technician Performance Standards
Appendix 7—Overtime Management Strategy
Appendix 8—Work Group & Organisational Structure

2.—INTENT

This Agreement is the result of agreement between the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia (W.A. Branch) and BP Refinery (Kwinana) Pty Ltd.

This Agreement continues the principle of change from a control to a commitment driven organisation. Employees covered by the Agreement will attain greater flexibility's and access to a rewarding career development. They will continue to have participation in decision making and involvement in matters that impact their working environment, leading to increased motivation and increased profitability. This will mean greater control over work priorities, structure and output and the acceptance of greater responsibility and accountability by the total involvement of the work group.

The grievance procedure is an integral part of this Agreement and as such reflects an ongoing commitment to maintain productivity in the workplace at the highest level. Management style will focus on team building, coaching and commitment to the principles of trust outlined in this Agreement.

This Agreement confirms the continuing commitment of the employees at BP Kwinana to the process of change and the need for change to ensure high standards of productivity.

3.—INCIDENCE

This Agreement shall apply to employees, who are members, or eligible to be members, of the CMETU engaged by BP Oil Kwinana in its Operations Area for the purpose of operating the Kwinana operations for the classifications set out hereunder. This Agreement takes precedence over the BP Refinery (Kwinana) Construction, Mining and Energy Workers Union Award 1980, and the Construction, Mining, Energy Workers Union and BP Refinery Kwinana Pty Ltd Site Agreement 1991 to the extent of any inconsistency.

4.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period commencing on or after 1 January 1996 for Refinery Process Technicians and shall remain in force until 31st December 1996. Rates of pay shall operate from the first pay period commencing on or after the dates specified in appendix 2.

During the life of this Agreement, there shall be a review by the parties of the Performance Incentive Scheme.(The Performance incentive Scheme is a separate in house document available to all employees).

During the currency of this agreement the Company and the Unions commit to positive progression of discussions to achieve a single site agreement to cover all award employees, in accordance with the concepts of the Single Site Working Party. This Agreement can be extended in its current form or amended by mutual agreement for additional periods of up to 12 months.

5.—CLASSIFICATION

All work in the Operations area of BP Oil Kwinana will be covered by the classification Refinery Process Technician. There will be an eight level career structure for all employees covered by the classification. See Appendix 1 for detail.

6.—TERMS OF EMPLOYMENT

(1) Except as hereinafter provided, employment shall be by the month. Any employee not specifically engaged as a casual, temporary or part time employee shall be deemed to be employed by the month.

Employment shall be terminated by a month's notice on either side given at any time during the month or by the payment or forfeiture of a month's wages as the case may be. This shall not affect the right of the Company to dismiss any employee without notice for neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal.

An employee not attending for duty will, except in the case of an authorised absence, lose pay for the actual time of such non attendance.

(2) It is a term and condition of employment and of the obligations and rights accruing under this agreement that an employee shall:

(a) Comply with the orders of the Company to work reasonable overtime at any time during the seven days of the week at the appropriate remuneration prescribed herein;

(b) Use all appropriate protective clothing and equipment provided by the Company for specific circumstances;

(c) Perform such work (including shift work) as the Company shall, from time to time, reasonably require;

(d) Comply with the Company's direction to carry out work required for the safety of personnel and plant, or for the prevention of pollution;

(e) Comply with the company's direction to keep the work place and equipment in a clean and safe condition;

(f) If a shift worker, who is not relieved as scheduled at the end of the shift, will continue to work until relieved or otherwise authorised by the Company to finish work provided that there shall not be a requirement to work more than 16 hours in any consecutive 24 hours.

(g) At the Company's direction carry out such duties as are within the limit of the employee's skill, competence and training.

(3) Where monitoring of any of the above points in (2) is required, it shall be undertaken in accordance with the terms of reference of the relevant work group as specified in Appendix 8.

7.—REMUNERATION—ANNUALISED SALARY

(1) Remuneration shall be paid fortnightly by EFT into recognised financial institutions nominated by the employee, one week in arrears and one week in advance.

(2) It shall be a full discharge of the obligations and rights normally accruing from shift work to a shift worker from week to week to pay an annualised salary in equal fortnightly portions.

(3) Day workers transferred to shift will be paid at a rate

equivalent to the rate of pay applicable to a shift worker at the same grade for all hours worked on shift.

(4) In the event of a failure in the banking system causing late lodgement of payment to an employee's bank account, payment will be effected by cash or cheque in accordance with arrangements made locally.

8.—SKILLS LEVEL PROGRESSION

Employees will acquire skills as defined in the category path structure, Appendix 1. On developing sufficient skills via the training modules, the skill levels will be tested, certified and used. When sufficient skills have been certified and utilised to move up to the next skill level, the employee will attract the appropriate remuneration for that level.

Promotion beyond the level of RPT5 will be subject to the needs of the organisation as determined by Management in consultation with the Work Group. Promotion to RPT5 will be strictly according to the certification and recertification requirements for the term of this Agreement without Management review.

Certification will occur within the time frame of the Agreement and recertification within a 2 year period, or if and when required. This will be administered by the appropriate work group.

9.—TRAINING AND EDUCATION

(1) Performance Standards are contained in General Performance Standards (appendix 6 for this agreement). The specific standards are defined by the unit training modules. These modules are to be reviewed and agreed by the Area Work Groups on an ongoing basis.

The training of PTs will be needs based and determined by the Shift Work Group.

(2) Training will focus on the needs of the trainee and as far as possible, will be self paced and self motivated. Employees will be encouraged to increase skill and knowledge levels. The majority of modular training can be done on shift where the employee can progress via 3-4 hour training blocks whilst being covered within the Refinery Shift Work Group.

(3) The role of every employee in training others is recognised. Employees will be given coaching on how to train others. The Refinery Shift Work Group will be responsible for the scheduling of training. Emphasis will be given to training consistent with the skills required for the work group to function at maximum productivity. An annual training plan shall be submitted by the Area Shift Work Group to the Shift Supervisors to ensure training is coordinated well in advance.

(4) Off shift training modules may be organised during rostered breaks by utilising groups of the 73 hours of make up time that occur during the year.

10.—SAFETY AND ENVIRONMENT

(1) A continuing high safety and environmental standard will be maintained on all plants.

(2) To reinforce this, all Refinery Process Technicians will participate actively on shift in the following—

(a) Housekeeping, such that the Plant and its surrounding pipetracks and roadways are maintained in an excellent condition of cleanliness as part of normal shift duties.

(b) Emergency practices and simulations.

(c) Leak adjustment. All leaks to atmosphere are taken up immediately by the Technician where practical. Refer Appendix 1.

(d) Safety training program and lectures are organised and implemented by each work group.

(e) Weekly documented Safety & Loss audits will be carried out by each work group.

(f) All incident/accidents are reported and then investigated and followed up by the appropriate work group.

(g) No part of the process is drained to sewer or atmosphere outside of the area guidelines.

(h) Documented environmental checks shall be carried out on a regular basis as required by legislative bodies.

11.—QUALITY

Refinery Process Technicians shall actively pursue improvement in the area of quality management. To facilitate this, Process Technicians will—

(a) Perform regular Laboratory tests as defined in Appendix 1 to maintain the highest standard of quality, within customer specifications.

(b) Sample all process streams according to required Laboratory schedule.

(c) Adjust the process in order to maintain all products within customer specifications.

(d) Participate in quality control investigations and quality management of the production processes.

12.—HOLIDAYS

All entitlements due to continuous shift workers for public holiday are averaged and included in the salary package.

13.—HOURS OF WORK

(1) Hours of work shall be as agreed in the 12 hour shift roster agreement, Appendix 3.

(2) All entitlements and payments referred to in the 12 hour shift roster agreement shall lapse when salary payments in this agreement commence.

(3) The Area Co-ordinating groups will manage their staffing rosters and will cover any absence in their work groups ensuring an agreed complement to safely meet the needs of the business and the workforce.

14.—ANNUAL LEAVE

(1) Annual leave entitlement for Operations Branch shift workers shall be 200 hours and may be split into more than two periods such that the needs of the individual and all needs of the business are maintained and agreed by the Shift Work Group.

(2) The Area Shift Work Group will organise a leave roster prior to December each year such that all leave entitlements are covered with due regard to business issues, staffing requirements and special projects, within the capacity of the leave relief component and minimum safe staffing levels. Reasonable notice shall be given to employees of the requirement to commence their annual leave.

(3) Annual leave entitlement for Operations Branch workers who normally work continuous 7 x 10 hour days per fortnight shall be 140 hours and may be split into more than two periods such that the needs of the individual and all the needs of the business are maintained.

(4) Area Support Technicians will organise their leave with regard to appropriate cover being provided from either shift operator and/or other Area Support Technicians to ensure business needs are met. Reasonable notice shall be given by either the employee or the company of an intention to commence annual leave.

(5) Any annual leave accrued for more than 24 months shall be taken as directed by the Work Group in line with current policy.

(6) An employee, other than a seven day shift worker, or a worker working 7 x 10 hour days per fortnight shall be entitled to a period of four consecutive weeks leave on or after the anniversary of each twelve months of continuous service with the employer.

(7) Other than casual employees and seven day shift workers, employees shall be paid whilst on annual leave their ordinary rate of pay plus 22½ per cent.

(8) For other than casual employees and seven day shift workers, when a public holiday as prescribed in Clause 10, 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 the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

15.—LONG SERVICE LEAVE

(1) Long Service Leave shall be taken as per the Long Service Leave Oil Companies Award 1985 except as provided herein.

(2) Any Long Service Leave shall be taken in periods such

that the needs of the individual and all needs of the business are maintained and agreed by the Shift work groups.

16.—SICK LEAVE

(1) Employees will be entitled to leave of absence in circumstances where they cannot attend for duty due to personal illness. The absence will be covered as necessary by the work group ensuring all safety and business issues are covered.

(2) Control of Sick Leave

Sick leave, with due consideration to confidentiality, will be controlled by the Steering Committee on recommendation from the Refinery Shift Work group, giving consideration to:

- length of service
- frequency of absences
- number of single day absences
- nature of illnesses
- duration of illnesses

(3) Counselling

All absences should be responded to in one way or another appropriate to the circumstances and the person concerned. Initial positive counselling by the supervisor should occur as soon as an employee absence record is considered unsatisfactory.

17.—BEREAVEMENT LEAVE

Bereavement Leave, which is not covered by the Human Resources Policy, shall be provided for on agreement of the work group.

18.—COMPASSIONATE AND SPECIAL LEAVE

Compassionate leave shall be granted on agreement of the work group.

Special leave shall be recommended by the Work Group within policy guidelines for Management approval.

19.—JURY SERVICE

Leave will be granted for Jury Service as per Company policy

20.—SAFETY CLOTHING

(1) The Company shall provide and maintain all appropriate protective clothing and safety equipment required in the workplace. No allowances shall be paid for the wearing of safety clothing.

(2) Company clothing shall be replaced on an as needs basis once the initial issue has been made.

(3) The onus will be on each employee to wear all protective clothing and safety equipment as defined by the BP Safety Regulations or such policy as is determined by the Refinery Occupational Health and Safety Committee.

21.—TOOLS & EQUIPMENT

The Company shall provide employees with such tools and equipment including consumables as is necessary for the performance of their duties. The tools will be replaced on an individual as needs basis. Replacement in kind will be provided on the basis of returning worn, obsolete or expired tools for proper handling.

22.—UNION DELEGATE

Employees appointed Union Delegates in the Plant or work area in which they are employed shall, upon notification thereof to the Company, be recognised as accredited representatives of the Union and shall be allowed, as agreed, necessary time during working hours to carry out Union business.

23.—GRIEVANCE PROCEDURE

If a question, dispute or difficulty arises, then until the matter is determined, work shall continue as directed by the Company. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this clause.

The following procedure will apply:

(1) The matter shall first be discussed by the aggrieved employee and the Line Supervisor.

(2) If no resolution within 48 hours;

The matter shall be discussed between the accredited Union representative, the Process Manager, the Line Supervisor and the employee concerned.

(3) If no resolution within five working days;

The parties may mutually agree to refer the issue to the Operations Manager, the Senior Employee Relations Officer and Senior Union Delegates.

OR

If the matter is considered to be of such importance, then the issue is to be brought to the attention of the Operations Manager and the Senior Employee Relations Officer immediately.

Some issues may require advancing to this stage without the above time constraints.

(4) Should the matter still not be resolved, it shall be referred by the Operations Manager to the Refinery Manager.

(5) If not resolved, the following options are available;

(a) If agreed, the matter to be referred to a mutually accepted arbitrator; or

(b) If agreement has not been reached, the matter shall then be discussed between a representative of the Company and the appropriate body of the union; or

(c) If the matter is still not settled, it shall be submitted to a member of the W.A. Industrial Relations Commission or Australian Industrial Relations Commission, whose decision shall, subject to any appeal in accordance with the Act, be final and shall be accepted by the parties.

24.—WORK GROUP MEETINGS

Work group meetings are to be actively encouraged. The work group structure is set out in Appendix 8.

25.—AGREEMENT REVIEW

Regular meetings of the Steering Committee will be held to review the viability of the Agreement and ensure adherence to the terms of the Agreement. Terms of reference for the Steering Committee are listed in Appendix 8.

26.—STAFFING

(1) Any adjustments to the workforce levels as defined in Appendix 4 will be presented for review and analysis by all parties at least 20 days in advance of the required time.

(2) In the event that the business of BP Oil Kwinana should curtail the parties will enter negotiations immediately with the intent to agree on an Employee plan.

(3) Should both parties agree that any employee plan will involve some retrenchments, then the BP retrenchment policy guidelines will be followed.

27.—SHIFT TO DAY SECONDMENTS

When a shift RPT is seconded on to day work for project work of a predefined nature, the following definitions and conditions shall apply—

Special Project Work

When applying normal work skills on a predefined project which could last up to 12 months on day work, the normal wage conditions shall apply as defined in the salary package, ie. no loss of normal salary.

If the time period is to exceed 12 months, the shift loading will be eroded over a time period as per the present practice for shift staff.

Acting into a Staff Position

When an individual volunteers to act into a staff position as defined by a written job description with an accompanying grade, no higher duties payment will apply in addition to the normal salary, as acting into the higher duties is already incorporated into the RPT grading system.

If the time period exceeds 12 months, the shift loading will be eroded over a time period as per the present practice for shift staff.

The above also applies to day workers acting into a staff position.

28.—NO EXTRA CLAIMS

This Agreement constitutes a closed agreement in that the agreement provides for no further wage or salary increases during the period of operation specified in the agreement, including increases from sources such as award variations or

decisions of the Commission, other than increases that are consistent with the terms of this and other agreements in force.

29.—ESTIMATED NUMBER OF EMPLOYEES BOUND BY THE AGREEMENT UPON REGISTRATION

The estimated number of employees bound by this agreement upon its registration under the Act is 20 (Twenty).

.....
P Bierwirth
Operations Process Manager
BP Refinery Kwinana Pty Ltd

.....
D MacTiernan
Construction, Mining, Energy,
Timberyards, Sawmills and
Woodworkers' Union of Australia
(W.A. Branch)

APPENDIX 1

CATEGORY STRUCTURE/SKILLS LEVEL

Employees will acquire skills as defined in the career development structure on developing sufficient skills in line with current state/federal legislation and via the training modules the skill levels will be tested, accredited and used. When sufficient skills have been accredited and utilised to move up to the next skill level, the employee will attract the appropriate remuneration for that level.

All RPT's will be assessed each year and as part of that assessment will be recertified on areas of responsibility they are able to perform the full duties of. The assessment will be a joint process including both award and staff supervisors. Those people who are deemed not to be certified to operate an area of responsibility by either the annual assessment or by virtue of poor performance will be required to recertify on that area before being able to man a unit containing that Area of Responsibility.

It is expected that all Refinery Process Technicians will progress to a minimum level of PT3.

Refinery Process Technician Trainee—Shift Operator

An employee who has been selected to be a Refinery Process Technician on shift and train to the minimum qualification of a Process Technician 1—Shift Operator.

Responsibilities

- Successfully complete initial briefing and orientation.
- Complete skills and knowledge requirements at a minimum of 90% raw score on written oral and field tests as verified by a Supervisor and a training coordinator.
  - Basic process skills module(s)
  - Basic Laboratory skills module
  - Process maintenance module
  - Permit procedures
  - Gas testing (combustibles, contaminants)
  - Safety Regulations
  - Fire/Emergency Response Training
  - Up to two areas of responsibility

Refinery Process Technician 1—Shift Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***up to two defined areas of responsibility***. He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.

Refinery Process Technician 2—Shift Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***up to 3 non-control areas of responsibility in his Complex.*** He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to four positions in the complex which may include positions on another Complex. Higher level of process testing skills required.

Refinery Process Technician 3—Shift Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***4 distinct and different non-control areas of responsibility in his or a second or third Complex***. He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.

Refinery Process Technician 4—Shift Operator

A Process Technician under the guidance and direction of

an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***6 distinct and different non-control areas of responsibility in his or a second or third Complex or all non-control areas of responsibility in two complete Complexes.*** He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to eight positions in the complex which may include positions on another Complex. Higher level of process testing skills required.

Refinery Process Technician 5—Shift Operator

Capable of operating in all control and non-control areas of responsibility in his Complex and acting in both RPT6 positions in his Complex as required. Will, if required, take on such responsibilities as are delegated, during the normal operation of his work station, up to the level of responsibility of RPT6 without supervision. Rotates through up to six operating positions at any one time.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Acts as coordinator for the Complex either in control function or on plant responsibilities as required. Rotates into the control function to maintain a high level of proficiency with all aspects of control.

Refinery Process Technician 6—Shift Operator

The Operations Branch Establishment is 60 PT6 positions. Of these, 25 are Control positions.

CCR control position duties and responsibilities

Takes full responsibility for operating the control system of an operating complex and is accountable for implementing all operating programs and optimising unit performance using advance control system optimisers and loop tuning software.

Offsites Control position duties and responsibilities

Takes full responsibility for operating the control system of an operating Complex and is accountable for implementing all operating programs and optimising area performance using advance control system optimisers and loop tuning software. This will include the running of the utilities area when phased into the Offsites Control function.

Directs the focus of Process Technicians with his awareness of plant performance.

Complex RPT6 Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Performs process monitoring, sampling, testing and process maintenance. Overviews these activities performed by technicians in his Complex.
- Participates in and overviews the training of other Process Technicians and Trainees in his Complex with commensurate knowledge, ability and experience.
- Takes full responsibility for the operation of the outside plant in any defined Complex. Co-ordinates and delegates responsibility to appropriately qualified Process Technicians. Organises leave, training programs, overtime and laboratory testing. Is accountable to the Shift Supervisor for the performance of the work group. The RPT7 and the CCR control position and Complex RPT6 will rotate on a regular rostered basis.
- Has high level of skill and experience which will be applied to review and develop plant improvements and efficiencies.

Refinery Process Technician 7—Shift Operator

This is an advancement position for an Area RPT6 who can take charge of the whole Area either North, South or Offsites. The Operations Branch Establishment is 15 PT7 positions.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Performs monitoring, sampling, testing and process maintenance. Overviews these activities performed by technicians in his Area.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in and overviews the training of other Process Technicians and Trainees in his area with commensurate knowledge, ability and experience.
- Takes full responsibility for the operation of the whole Area including the CCR and Area RPT6's. Supervises and delegates responsibility to appropriately qualified Process Technicians. Responsible for organising leave, training programmes overtime and Laboratory testing. Is accountable to the Shift Supervisors for the performance of the Work Group.
- Relieves the Shift Supervisor for short term absences with no additional increment to the Work Group.
- RPT5, RPT6 and RPT7 are required to relieve in higher grades as necessary, the higher duty payments being incorporated into the rate for those grades.

Refinery Process Technician Trainee—Area Support Operator

An employee who has been selected to be a Refinery Process Technician off shift and train to the minimum qualification of a Process Technician 1—Area Support Operator.

Responsibilities

- Successfully complete initial briefing and orientation.
- Complete skills and knowledge requirements at a minimum of 90% raw score on written, oral and field

tests as verified by a Supervisor and a training coordinator.

- Basic process skills module(s)
- Basic Laboratory skills module
- Process maintenance module
- Permit procedures
- Gas testing (combustibles, contaminants)
- Safety Regulations
- Fire/Emergency Response Training
- Two areas of responsibility

Refinery Process Technician 1—Area Support Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***up to two defined areas of responsibility***. He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Assists the Area Supervisor in the execution of his duties.

Refinery Process Technician 2—Area Support Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***up to 3 non-control areas of responsibility in his Complex.*** He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to four positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Assists the Area Supervisor in the execution of his duties.

Refinery Process Technician 3—Area Support Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***4 distinct and different non-control areas of responsibility in his or a second or third Complex***. He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Assists the Area Supervisor in the execution of his duties.

Refinery Process Technician 4—Area Support Operator

A Process Technician under the guidance and direction of an RPT7 or Staff Supervisor, who is qualified, capable and willing to perform safely and efficiently all duties associated with ***6 distinct and different non-control areas of responsibility in his or a second or third Complex or all non-control areas of responsibility in two complete Complexes.*** He must be able to execute running adjustments, minor mechanical efficiencies and simple laboratory testing consistent with safe and effective operation. Must be able to shut down, start up and perform satisfactorily in other non routine unit responsibilities.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to eight positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Assists the Area Supervisor in the execution of his duties.

Refinery Process Technician 5—Area Support Operator

An Operator operating in all non-control areas of the Complex and assisting the Area Supervisor and other day functions in the ongoing administration of the Complex. Will, if required, take on such responsibilities as delegated, during

normal daywork hours, by the Area Supervisor. **Requires a minimum of 3 years as a qualified PT2, or 2 years as a PT3 or one year as a PT4 for operating experience and expertise.**

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6's on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Ensures the availability of consumables for the Complex and takes responsibility for the maintenance of energy, environmental and safety monitoring/reporting programs on the complex.
- Must have knowledge of, and be willing to use any device or instrument or software necessary to perform effectively the duties listed above eg. Vax, Teroman, TDC, PCs and measurement devices.
- Ensures the availability of, and organises the maintenance of communication, testing, safety, computing and sundry office equipment in the Complex, including the calibration of agreed testing equipment.
- Assumes the key roles of Area Supervisor on a day by day basis in addition to his own duties, in the absence of the Supervisor.

Refinery Process Technician 6—Area Support Operator

An Operator operating in all non-control areas of the Complex and assisting the Area Supervisor and other Day Functions in the ongoing administration of the Complex. Will, if required, *assume the duties of the Area Supervisor, in a relief or support capacity for extended periods* and take on such responsibilities as are delegated, during normal day work hours, by the Area Supervisor.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6s on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Ensures the availability of consumables for the Complex and takes responsibility for the maintenance of energy, environmental and safety monitoring/reporting programs on the complex.
- Must have knowledge of, and be willing to use any device or instrument or software necessary to perform effectively the duties listed above eg. Vax, Teroman, TDC, PCs and measurement devices.
- Ensures the availability of, and organises the maintenance of communication, testing, safety, computing and sundry office equipment in the Complex, including the calibration of agreed testing equipment.
- Assumes the key roles of Area Supervisor on a day by day basis in addition to his own duties, in the absence of the Supervisor.

Refinery Process Technician 7—Area Support Operator

An Operator operating in all non-control areas of the Complex and assisting the Area Supervisor and other Day Functions in the ongoing administration of the Complex. Will, if required, *assume the duties of the Area Supervisor, in a relief or support capacity for extended periods* and take on such responsibilities as are delegated, during normal day work hours, by the Area Supervisor.

This area must be flexible within 3 Complexes and must be able to relieve the Shift Supervisor for extended periods.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6s on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.
- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.
- Ensures the availability of consumables for the Complex and takes responsibility for the maintenance of energy, environmental and safety monitoring/reporting programs on the complex.
- Must have knowledge of, and be willing to use any device or instrument or software necessary to perform effectively the duties listed above eg. Vax, Teroman, TDC, PCs and measurement devices.
- Ensures the availability of, and organises the maintenance of communication, testing, safety, computing and sundry office equipment in the Complex, including the calibration of agreed testing equipment.
- Assumes the key roles of Area Supervisor on a day by day basis in addition to his own duties, in the absence of the Supervisor.

Area Support Process Technicians

Will attain the classification RPT1, RPT2, RPT3, when trained to those levels and RPT4 or RPT5 when completing all tasks as defined by their agreed job descriptions. They will receive the all inclusive rate excluding public holiday component and shift loading. They will cover overtime positions where trained and as necessary.

Duties and Responsibilities

- Responsible for the preparation and isolation of equipment for maintenance including the signing of site permits to indicate the conditions of isolation are met.
- Liaises with the RPT6s on all aspects of unit control, maximises yields and minimises losses within equipment constraints and product specifications.
- Performs process monitoring, sampling and testing as required.

- Performs minor maintenance tasks as necessary to complete the whole job where trained and competent.
- Participates in the training of other Process Technicians and Trainees with commensurate knowledge, ability and experience.
- Must have knowledge of, and be willing to relieve in all lower category jobs in the Complex. He will be expected to rotate through up to six positions in the complex which may include positions on another Complex. Higher level of process testing skills required.

EXTENDED VACANCIES

In the event that PT6 or PT7 Technician has been away from their normal assigned position for more than six months, consideration can be given to a temporary promotion which will be supernumerary to the Operations Branch Establishment. This temporary promotion shall be in effect for as long as the PT7s or PT6s continue to be away from their normal assignment and will terminate immediately when the assigned PT6 and PT7 returns.

In the event that the Area Supervisor is away from their normal assigned positions for an extended period of time of 3 weeks or more, consideration can be given by the Area Supervisor to a temporary promotion of PT5, PT6 or PT7 which will be supernumerary to the Operations Branch Establishment. The temporary promotion to PT5, PT6, or PT7 will terminate immediately when the Area Supervisor returns to this assigned position.

APPENDIX 2

REMUNERATION/SALARY DEFINITION

The crux of the salary package is that it is a fixed amount per annum with an added performance element accrued quarterly and paid six monthly. The salary will be paid fortnightly with no variation for allowances, actual overtime worked or higher duties. The variable performance component is not pensionable.

The rates effective from 29 November 1995 include the increases effective from 1 April 1995 and 1 October 1995 provided for under the superseded agreement (AG 7 of 1995) and an agreement between the parties to implement a further 3% effective from 29 November 1995 resulting from proceedings of the Australian Industrial Relations Commission—C No. 34437 of 1995.

Shift Workers

A shift worker other than a casual employee in the classification and with the skill level specified in the table hereunder shall be paid per annum as follows;

Classification	Fortnightly Wage (effective 29/11/95) Part A + Part B (26) = Annual	Fortnightly Wage (effective 1/1/96) Part A + Part B (26) = Annual
Trainee Ref Proc.Tech	$1605.71+ $0 = $41749	$1686 + $0 =$43836
Ref Process Tech 1	$1879.04 + $211.43 = $54352	$1973 + $222 =$57070
Ref Process Tech 2	$1993.33 + $223.81 = $57646	$2093 + $235 =$60528
Ref Process Tech 3	$2055.24 + $232.38 = $59476	$2158 + $244 =$62452
Ref Process Tech 4	$2124.76 + $239.05 = $61459	$2231 + $251 =$64532
Ref Process Tech 5	$2175.24 + $246.67 = $62969	$2284 + $259 =$66118
Ref Process Tech 6	$2250.48 + $255.24 = $65148	$2363 + $268 =$68406
Ref Process Tech 7	$2335.24 + $265.71 = $67625	$2452 +.$279 =$71006

Note: Part A element is Base Rate (Pensionable Salary).

Part B element is non pensionable salary.

Day Workers

A day worker, other than a casual employee, in the classification and with the skill level specified in the table hereunder shall be paid per annum as follows:

Classification	Fortnightly Wage (effective 29/11/95) Part A + Part B (26) = Annual	Fortnightly Wage (effective 1/1/96) Part A + Part B (26) = Annual
Ops Support Trainee	$1137.14 + $0 = $29566	$1194 + $0 = $31044
Ops Support Tech 1	$1352.38 + $211.43 = $40659	$1420 + $222 = $42692
Ops Support Tech 2	$1432.38 + $223.81 = $43061	$1504 + $235 = $45214
Ops Support Tech 3	$1476.19 + $232.38 = $44423	$1550 + $244 = $46644
Ops Support Tech 4	$1524.76 + $239.05 = $45859	$1601 + $251 = $48152
Ops Support Tech 5	$1559.05 + $246.67 = $46948	$1637 + $259 = $49296
Classification	Fortnightly Wage (effective 29/11/95) Part A + Part B (26) = Annual	Fortnightly Wage (effective 1/1/96) Part A + Part B (26) = Annual
Ops Support Tech 6	$1612.38 + $255.24 = $48558	$1693 + $268 = $50986
Ops Support Tech 7	$1654.29 + $265.71 = $49920	$1737 + $279 = $52416

Note: Part A element is Base Rate (Pensionable Salary).

Part B element is non pensionable salary.

Casual employees for all time worked will be paid at the Part A rate for the classification engaged in, plus 20%.

The salary package negotiated in this agreement shall stand for the duration of the agreement, unless varied by the W.A. Industrial Relations Commission and/or Australian Industrial Relations Commission.

APPENDIX 3

12 HOUR SHIFT ROSTER CONDITIONS

PREFACE TO 12 HOUR SHIFT ROSTER AGREEMENT

The purpose of this preface is to detail the intent of the conditions as agreed in discussions between the Site Committee and Company representatives. It is not intended to explain in detail every condition listed but clarify those conditions that may be misinterpreted.

1.7 The offer of the 12 hour shift roster trial agreement and the subsequent acceptance will be made separately to the AWU shift operators employed at BP Kwinana Refinery and the CMETU shift operators employed at BP Kwinana Refinery (but acceptance by both is necessary for implementation.

1.8 Should either party to the agreement wish to terminate that agreement, then all agreements pertaining to the 12 hour shift roster will lapse after the 10 week notice period. This action cannot be taken lightly as the amendment to the award for the 12 hour shift will be by the Commission so any changes need to go back to that forum for approval.

2.9 This clause will also include shift operators moving permanently to day work and also the change over from 8 hour shift to the 12 hour roster.

3.2.1 This clause should be read in conjunction with clauses 5.3 and 5.6.

3.2.2 This clause should be read in conjunction with clause 5.5.

3.3.3 The situation may develop with a startup, shutdown or with shipping where an individual on overtime may be requested to work beyond 14 hours to complete the work. if an individual looks like he will exceed 16 hours overtime, his overtime should be terminated 12 hours and another individual called to cover the additional period. This relates to the 4 hours minimum clause.

3.5.1 The intent of this clause is to maintain current leave provisions of 35 consecutive days as per the AWU (OC) award 27a(ii) and CMETU award clause 21(2) (3)(a).

3.5.3 Sick leave entitlement remains at 64 hours as per the award, however with the change to the 12 hour roster this equates to 5.33/12 hour shifts. The requirement to produce a doctor's certificate as per the award is not altered.

3.6.3 Meal allowance—scheduled overtime of 12 hours duration attracts only one meal allowance and that occurs after 4 hours. Unscheduled overtime attracts two meal allowances, the first after 4 hours and the second after 10 hours.

3.6.4 Callout and Travel Time allowance—no alteration to existing award conditions or company policy as a result of this agreement.

5.5 For explanation see the detail on the roster example in Shift Supervisors office.

5.6 At the completion of a startup, shutdown or on the sailing of a ship, when the need for the overtime is finished, the individuals concerned will be sent home regardless of time. Individuals wherever possible should be advised before hand are likely to be sent home early.

5.7 The requirement for "U" day personnel to cover overtime on "U" day is limited to the following:

1. Short periods whilst waiting for the overtime call in to arrive (eg. 7.00am—9.00am).
2. Should an operator on shift at the time have cause to leave the refinery at short notice for whatever reason, then coverage from "U" day personnel can be arranged to cover the rest of the shift with the period from 1400 hrs to 1900 hrs being on overtime.
3. Should the Shift Supervisor be unable to cover an overtime position on his shift because of the unavailability of personnel for whatever reason the "U" day personnel can be required to cover the period from 1400 hrs to 1900 hrs.

6. The intent of clauses 6.1, 6.2 and 6.3 is to ensure that all listed overtime is booked prior to the shift finishing it's last day shift. It is important that all parties co-operate to ensure an amicable coverage of the overtime.

7.4 It is important that this list be provided and to ensure that each person takes his turn at the top of the list. This is to ensure a fair and equitable arrangement. The list should cover all positions on the area.

9.6.1 It is not the intent that this option be used on a regular basis due to the additional costs associated with it. It is primarily there to cover premium periods such as Xmas Day and Boxing Day to make coverage on those days more acceptable.

10. This is not intended to discipline employees for not working overtime. However if the actions of any employee are clearly contrary to this agreement or negligent causing harm to persons or property, a step by step discipline procedure will be followed to correct the problem.

AGREEMENT

1. SPECIFIC CONDITIONS

1.1 Hours of Work

1.1.1 A "12 hour shift" shall mean a shift of 12 hours duration.

1.1.2 The ordinary working hours of employees on shift work shall be 35.0 per week and may spread over the full cycle of the chosen roster, provided that the average hours per week shall not exceed 35.0 and shall be worked in shifts not greater than 12 hours inclusive of a crib break.

1.2 Overtime

1.2.1 Overtime will be worked on RDO's normally in 12 hour blocks, however from time to time as deemed necessary by the Supervisor, periods of less than 12 hours may be worked. Overtime payment will be based on actual hours worked.

1.2.2 Overtime will primarily be covered by off duty shifts and will be administered in accordance with the 12 hour shift Overtime Agreement.

1.3 Rest Period

1.3.1 The maximum hours to be worked in one shift is 14 hours (excepting after the last shift when 16 hours maximum will apply). To ensure that employees receive a 10 hour break between shifts, every effort must be made to call in a relief within 2 hours. This will enable the person held back to have a 10 hour break without affecting the next shift.

1.3.2 When overtime is necessary it shall be so arranged that a shift employee has a ten hour rest period between shifts worked on successive days. When this cannot be achieved the employee shall be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary time occurring during such absence.

1.3.3 Only under extreme circumstances will an employee be expected to work beyond 14 consecutive hours. All consideration will be evaluated in order that 14 hours is the maximum consecutive hours worked by an employee.

1.4 Public Holidays

1.4.1 Rostered off on a public holiday.

Where a relevant award provides that a shift worker whose rostered day-off falls on a holiday, Monday to Friday to which a day worker is entitled, and who is not required to work shall receive 8 hours' ordinary-time in addition to his weekly wage.

1.4.2 For public holiday entitlements, the day where the most hours are worked will receive the full 12 hours entitlement.

Example—Monday night shift starts at 7.00pm on Sunday.
—Monday day shift starts at 7.00am on Monday.

DAY	DATE	1	2	3
Sunday	10	-	D	N
*P/H Monday	11	-	D	N (Lines 2 and 3)
Receive P/H Entitlement				
Tuesday	12	N	-	D
Wednesday	13	N	-	D

1.4.4 The night shift starting at 7.00pm (line 1) on Monday will not receive the Public Holiday entitlement whereas the night shift starting at 7.00pm on the Sunday (line 3) will receive the Public Holiday entitlement. The day shift working the Public Holiday (line 2) will always receive the Public Holiday entitlement. The night shift starting at 7.00pm on Monday will be paid 8 hours extra at single time.

1.4.5 If a public holiday falls on a day the worker would normally be required to work between the first and the last day of an annual or long service leave period; that day will not count as a day of leave (see Case 1).

1.4.6 If the public holiday falls on a day the worker would normally be rostered off; a payment of eight hours wages will be credited (see Case 2).

1.4.7 Case 1

S S M T W T F S S M T
N N D D T X X X)
H H P H H X X X) 4 Days leave (3 days + 1 U day)
(H = Annual Leave)
(P = Public Holiday)

1.4.8 Case 2

D D X X X X X X N N)
H H P X X X X X H H) 4 days leave plus 8 hours

1.5 Leave Credits

1.5.1 Recreational Leave—199 hours per annum (16 shifts + 1 "U" day).

1.5.2 Long Service Leave—517 hours after 10 years (41 1/3 shifts + 3 "U" days of 7 hours each).

1.5.3 Sick Leave—64 hours per annum (40 hours/annum for 1st year).

1.5.4 Bereavement Leave—24 hours per occasion (as defined in Award).

1.5.5 All current rules relating to leave taking to apply.

1.6 Allowances and Penalty Payments

1.6.1 Weekend penalties—no change.

1.6.2 Shift allowances—no change D/S loading 11 2/3%
N/S loading 15%
"U" day loading 10%.

1.6.3 Meal allowances—one meal allowance is payable after 1½ hours overtime following a normal rostered 12 hour shift. When working scheduled overtime on a rostered day off, one meal allowance is payable after the first four hours. Should the overtime exceed a continuous 13½ hours then a further meal allowance will be paid. In the case of unscheduled overtime worked on a rostered day off, one meal allowance is payable after the first 4 hours, with a second meal allowance payable after 10 hours.

1.6.4 Callout and Travel Time allowance—will be paid for unscheduled overtime. These allowances will not be paid for scheduled (pre-planned) overtime.

OVERTIME RULES FOR TWELVE HOUR SHIFT ROSTER

The following conditions relating to the working of overtime on the Twelve Hour Shift Roster trial should be agreed between the AWU, the CMETU and BP Oil Kwinana Refinery.

2.1 That the conditions shall be without prejudice to future award conditions.

2.2 That they are to be regarded as operating only for the duration of the 52 week trial.

2.3 That where appropriate they operate in lieu of current relevant award provisions.

2.4 Any conditions contained herein, that are found to be unworkable during the period of the trial, will be reviewed by the Assessment Committee and where necessary, revised by mutual agreement.

2.5 The Company will make every effort to avoid excessively high levels of overtime.

2.6 These procedures do not alter or take precedence over existing callout procedures detailed in Section 4.7 of the Disaster Response Plan.

3. General Conditions

3.1 All overtime wherever possible is to be preplanned or scheduled.

3.2 Overtime will be administered by the Shift Supervisor of each area. The Head Operator is to assist the Shift Supervisor as required.

3.3 Overtime will be worked in the form of 12 hour blocks on rostered days off, and where appropriate, in continuous

periods of less than 12 hours.

3.4 Full 12 hour overtime shifts should finish at normal shift change.

3.5 Overtime will generally be worked covering the period commencing with the day shift following the last rostered day shift to the end of the night shift 48 hours later. Where a shift is rostered on a utility day its "duty overtime period" will commence at 0700 hours on the day shift following the "U" day with the previous "duty overtime shift" covering the overtime.

3.6 If there is no requirement for an overtime shift to be completed due to no work then the operator will be sent home. This is subject to the minimum of 4 hours. Whenever there is a likelihood of an overtime shift not covering a full 12 hour period, this should, where practicable, be advised to the individual when requesting the overtime.

4. Scheduled Overtime

4.1 All scheduled overtime is to be offered by the Shift Supervisor preferably in the morning of the last day shift, ie. not on a utility day.

4.2 All scheduled overtime for the duty overtime shift must be assigned prior to that shift completing their last day shift.

4.3 Shift Supervisors will use best estimates for planning shipping coverage. Once ships are along side, estimated discharge and loading rates are to be used to schedule overtime requirements.

5. Unscheduled Overtime

5.1 All unscheduled overtime is to be covered by the duty overtime shift for the period concerned and will be covered by callouts. Where the "duty overtime shift" is fully committed or working overtime, then callouts can be made to the "off" shifts as per 7.6.2.

5.2 Callouts for unscheduled overtime wherever possible will be made at an agreed time, ie. between 0600 hours and 0700 hours for day shift coverage, and as early as possible for night shift coverage.

5.3 All callouts will be for a minimum period of 4 hours.

5.4 Each shift will provide a list of operators to the Shift Supervisor, who are available to be called during their duty overtime period. The list should ensure that all positions/skills for the particular area are capable of being covered.

6. Cancellation of Overtime

6.1 If overtime is cancelled more than 24 hours prior to the proposed starting time of the overtime shift, there will be no penalty.

6.2 If cancelled less than 24 hours prior to the proposed starting time of the overtime shift, then award conditions prevail.

7. Allocation of Overtime

7.1 The Head Operator of each area will maintain an overtime record book. The book will be accessible to the Shift Supervisor.

7.2 All listed overtime authorised by the Shift Supervisor, will be offered preferably on the morning of the last day shift, ie. not on utility day.

7.3 Each shift will be responsible for filling its own listed overtime and providing cover according to the roster.

7.4 Each shift/area will have in place a recording system which records the overtime worked by each individual.

7.5 Overtime will be offered to individuals commencing with the person whose turn it is next on the list.

7.6 If after canvassing all individuals, the overtime is not covered, then it should be offered again to those who have refused the first offer. If the overtime is still not filled the following options can be adopted:

7.6.1 Split the overtime between two operators evenly (2 x 6 hours).

7.6.2 Contact can be made with an "off" shift via the callout list, ie. the shift on the last 48 hours of its break, followed by the shift in the middle of its break.

7.7 Should the overtime still remain un-allocated then the person on top of the duty callout roster (as per 5.4) will be allocated the overtime, provided he is not already working on that break. If so, the overtime will go to the next person in turn.

THE OVERTIME MUST BE COVERED PRIOR TO COMPLETION OF THE LAST DAY SHIFT.

8. Failure to Respond to Callouts

Where some individuals, on a continuous basis, fail to respond to overtime callouts, it places in jeopardy the whole framework that has been established for the 12 hour roster trial. To ensure the smooth and successful progression of the trial, it is imperative that all personnel involved give the trial their fullest commitment.

All failures to respond will be recorded. A high frequency of failure to respond without due cause, will be in contravention of the agreement and so, viewed as breaching Company regulations. Any breach will be subject to disciplinary procedures as established by the Assessment Committee or Company.

APPENDIX 4

OPERATIONS STAFFING STRATEGY

Establishment Manning Levels per Area

North

13 posts per shift

2 Area Support Operators 67

South

10 posts per shift

2 Area support Operators 52

Offsites

12 posts per shift

1 Area Support Operator 61

Establishment Manning Levels

	Shift	Day
North	65	2
South	50	2
Offsites	60	1

Minimum Union Membership

AWU	159
CMETU	20

Defined Areas of Responsibility

Code			
LC-1	Vacuum Unit/Furfural Unit	)	)
LC-2	PDA/Intertankage	)	)
LC-3	Ferrofiner/Filters	) Lubes Complex)	
LC-4	SDU	)	)
LC-5	Bitumen	)	)
LC-6	CCR Control	)	) North Area
RCU-1	Converter/Hot Pump Alley	)	)
RCU-2	GRU/Minalk	)	)
RCU-3	SRU/Tankage/Injections	)	)
RCU-4	Cat Poly/PPU2	) RCU Complex	)
RCU-5	CCR Control	)	)
CC-1	PPU/Merox	)	)
CC-2	CDU1	)	)
CC-3	CDU2	) Crudes Complex)	
CC-4	Hyd1/FG Main/Tankage/Blending)	)	
CC-5	CCR Control	)	) South Area
MC-1	CR2	)	)
MC-2	Alkylation/FPS	) Mogas Complex)	
MC-3	Hydrofiner 2	)	)
MC-4	CCR Control	)	)
OMC-1	Black Oil Tankage	) Oil Movements	)
OMC-2	White Oil Tankage	) Complex	)
			)
TTC-1	Jetties/Pipelines	) Transport	) Offsites Area
TTC-2	LPG/Separators/Flare	) Treatment	)
TTC-3	Waste Water Treatment	) Complex	)
UC-1	CWPH	)	)
UC-2	Boilers	) Utilities	)
UC-3	Compressors/Chemicals	) Complex	)
UC-4	Control	)	)

APPENDIX 6

PROCESS TECHNICIAN PERFORMANCE STANDARD

EXAMPLE

These are the Performance Standards required for a Process Technician at BPRK to achieve the minimum level of performance.

SAFETY

A. Process Technicians must ensure they know the location of, have access to and always use the proper safety equipment for the task being done.

B. Process Technicians must know and comply with all

Company safety regulations. This includes making commentary regarding specific safety procedures and practices to improve, enhance or update these practices and procedures.

C. Process Technicians must know the location of and how to use the safety equipment in their area.

D. Process Technicians are expected to ensure that all other personnel on their area comply with all safety regulations.

E. Process Technicians must "voice" their opinions if they feel a task can be performed more safely.

F. Process Technicians are expected to report all safety hazards or potential hazards to their Supervisor. This includes commentary on practices and procedures.

G. Process Technicians should know and apply all safe practices, procedures and rules pertaining to hazardous chemicals on their area.

H. Process Technicians are expected to actively participate in safety meetings, HAZOPS (as required) and process plant safety initiatives (whilst on shift).

OPERATIONS

A. Process Technicians must complete all outside checks and understand the reason for any variations within their assigned position of the operating plant. Such variations should be communicated.

B. Process Technicians should confer with C.C. Boardman when to take samples, to ensure unit conditions are stable and results will be relevant. Pressure surveys and temperature surveys will be completed as required to pin point problem areas.

C. Process Technicians must carry out routine machinery inspections throughout the shift, noting and reporting any problems found which are beyond their scope to handle and control.

D. Process Technicians are expected to adjust operating conditions such that programmed throughputs and product specifications are met.

E. Process Technicians must contribute on an equal basis to housekeeping, required detailed plant inspections, regulated process equipment surveys and indicate problem areas beyond their scope to handle or control.

F. Process Technicians must be able to shutdown their unit in a safe manner as required. This includes emergency operating procedures.

G. Process Technicians must be able to start up their unit safely. This includes a process unit "hot restart" after conditions stabilise.

H. All Process Technicians must operate all plant, equipment and machinery efficiently and safely.

I. Process Technicians are expected to operate all plant equipment and machinery in their assigned position of the operating plant without continuous supervision.

J. Process Technicians are expected to raise work orders for repairs or improvements beyond their scope to handle and control. This includes complete definition of problem or potential problems, and a definition of impact to the plant. Process Technicians should be aware of the status of repair work and assist in determining priority.

K. Process Technicians are expected to complete all equipment preparation for repairs completely and effectively. This includes preparation before repairs, after repairs and inspection of the work area for completion of the work including clean up.

L. Process Technicians are expected to be completely aware of the required routines in their assigned area of the process plant. This includes implementation of the routines and commentary on the development and updating of routines.

ANALYTICAL

A. Process Technicians must draw samples correctly, such that the sample is representative of the process operation.

B. Process Technicians are expected to perform all assigned analytical sample testing if the sample results are off spec and take appropriate action.

C. Process Technicians must "challenge" gas testing machines regularly, so that reliable machines are available when required.

D. Process Technicians are expected to closely monitor all lubrication and chemical stocks and ensure same are available at all times.

E. Process Technicians should monitor and evaluate the performance of on line analytical equipment.

COMMUNICATIONS

A. Process Technicians are expected to keep an accurate log of events during their shifts. Communication with their reliefs is of critical importance and must be conducted efficiently and effectively.

B. Process Technicians are expected to communicate with other areas whenever they are undertaking an operation which may impact directly or indirectly on another area.

C. Process Technicians are expected to have functional radios with them at all times and to ensure that any faults are reported as soon as possible.

Process Technicians are expected to handle two-way radios with care and control and hand over these radios in proper working condition to their relief or their Supervisor.

ENVIRONMENTAL

A. Process Technicians are expected to be aware of conditions of EPA operating license for BPRK as they apply to plant operations generally and specifically to their assigned portion of the plant process.

B. Process Technicians are expected to handle chemicals such that spills do not occur, however should a spill occur, Process Technicians are expected to contain/control and report the incident.

C. Process Technicians are expected to reduce and/or eliminate any contamination to the environment within their assigned portion of the process plant. This includes, air, land and sea.

D. Process Technicians will conduct all required environmental surveys and plant inspections within their assigned portions of the plant process.

COSTS

A. Process Technicians are expected to make suggestions which can improve efficiency and profitability. This includes the physical plant, materials, consumables and the application of new techniques and technology.

B. Process Technicians are expected to make efficient use of all tools, chemicals, energy and other consumables.

C. Process Technicians must minimise the production of off spec products.

D. Process Technicians are expected to make efficient use of the time available to them. This includes planning, prioritising and scheduling their activities.

PROCEDURES

A. Process Technicians must follow operational procedures.

B. Process Technicians are expected to comment on all equipment blanks lists.

C. Process Technicians are expected to comment on all plant operating procedures as they are used or as they are developed.

PERSONAL DEVELOPMENT

A. Process Technicians are expected to actively participate in their personal development plan. This includes input into and follow through of their individual training and development program as assigned by their Shift Supervisor.

B. Process Technicians are expected to comment on their regular assessments and implement the actions outlined in these assessments to maintain as a minimum, competent performance.

C. Process Technicians are expected to maintain a very high level of proficiency in conducting process plant operations. Regular review of procedures, practices, operating plans and instructions are required as assigned by the Shift Supervisor.

D. Process Technicians are expected to participate actively in their own personal development and the personal development of others as scheduled and prioritised by the Shift Supervisor and his group. Those Process Technicians trained specifically as trainers will be assigned to implement specific programs.

OPERATOR PERFORMANCE STANDARD FOR PT7

AND PT6 TECHNICIANS

RESPONSIBILITY OF THE POSITION

A. To maintain in a safe and efficient manner the operating areas of the Refinery in order to ensure the continuous supply of all utilities.

B. To direct and overview the technical correctness and completeness of all Process Technicians within his assigned portion of the process plant.

C. Must know and understand refinery safety regulations, operating standing instructions and operating procedures and practices within his assigned portion of the process plant.

D. Will overview all permits on his area for technical accuracy and completeness. This includes isolation, recommissioning and preparation of equipment for maintenance, including inspection of equipment.

E. To ensure all operating procedures are implemented safely and effectively.

F. To maintain a written log of shift events and verbally review events on the shift and status of on-going maintenance to his relief. Also to ensure all communications are carried out in a timely and effective manner.

G. To ensure incident, accident reports and work orders are handled efficiently and effectively.

All of the above items (A-G) to be rated on a scale of 0-5, expectation is that consistent levels 3.0-3.5 are attained.

Each item should be assessed on agreed performance targets, ie. item agreed number of times that delays are incurred to maintenance which can be attributed to himself or his shift.

Each item should be the same with targets to reach, as agreed at interview.

ROUTINE DUTIES THE PT7 AND PT6 TECHNICIAN PERFORMANCE IS SATISFACTORY WHEN THE FOLLOWING REGULAR TASKS ARE COMPLETED EFFICIENTLY AND EFFECTIVELY

A. The area log records Shift Supervisors instructions and all other communications are conducted efficiently and effectively through process plant inspections and routinely monitoring of the assigned process plant every 4 hours.

B. Samples and all assigned shift unit tests are completed and results recorded. Drawing all designated samples (weekly and daily) for laboratory testing per the assigned lab schedule. Follow up with the lab is completed appropriately.

C. Play an active role in unit housekeeping.

D. Carry out lighting surveys on a regular basis.

E. Routine checks of unit and personnel safety equipment are conducted on a pre-established schedule.

F. Chemical stocks are checked and ordered as required. Order general stores by the pre-established schedule with good co-ordination of the area requirements.

G. Monitor his Process Technicians at all times and ensure they are fulfilling all of their duties to the best of their abilities.

H. Training and Development schedules are maintained with agreement to Supervisors priorities.

I. All surveys for sewer drainings, venting relief system process checks, trouble shooting etc. are completed as assigned in a thorough and timely manner.

J. Project work and major maintenance work is reviewed regularly for working conditions and full compliance with procedures and permit references.

NOTE: This list is not to be regarded as exhaustive.

MAINTENANCE

A. The Process Technician 7 and Process Technician 6 must ensure that all machinery/equipment is monitored and action is taken to prevent major failures. He is also to keep Supervisors and other operating personnel informed of equipment status.

B. Work orders must be raised immediately for defects and submitted. It is the responsibility of the operator to find out status of work requested ie. expected date of repair.

C. To ensure all isolations/recommissionings are correctly done by the attending Process Technician prior to issuing permits for maintenance work.

SAFETY/ENVIRONMENTAL

A. Must ensure all safety regulations are adhered to by all personnel on his area.

B. Must ensure all chemicals on his area are known and all personnel fully understand the hazardous data material sheets for each of them.

C. Must be aware of environmental license conditions for his area and ensure compliance.

D. Must follow all existing operating procedures and also assist in developing new ones for approval.

E. When following a procedure with a check list each step is to be checked as carried out with time and date noted. Completed procedure to be signed when completed and forwarded to Supervisor.

COMMUNICATIONS THE PT7 AND PT6 MUST ENSURE THE FOLLOWING—

A. That area radios are in working order at all times. Any defects beyond his scope to handle or control to be reported immediately to his Supervisor.

B. Items of critical nature will be communicated to his Supervisor immediately by phone or radio.

C. Full verbal review of shift events and changes must be given to his relief on handover, also reason for them. Any critical procedure or logbook references should be reviewed mutually.

D. Must ensure that the Process Technicians are in regular contact at least once every two hours during the course of his shift.

E. The PT7 and PT6 Technicians are expected to ensure ideas, suggestions, improvements, etc. are forwarded to the Shift Supervisor. The forwarding is expected to be in the appropriate ENG104, COMP104, etc. format for review and eventual implementation.

TRAINING/DEVELOPMENT

A. The Process Technicians 7 and Process Technicians 6 are expected to maintain a good standard of proficiency and will be subject to regular assessment.

B. They are expected to assist in developing training schemes for their area and assisting in Process Technicians assessment, training and testing.

C. They are expected to participate actively in his own personal development plan as assigned by the Shift Supervisor.

D. They are expected to participate in performance assessment and employee reviews as assigned by the Shift Supervisor.

APPENDIX 7

OVERTIME MANAGEMENT

- Process Technician posts to be filled when staffing levels fall below 3% of the Operations Branch establishment.
- No Technician will be required to work overtime in excess of 8.5 percent per annum.
- Off shift representatives on committees as recognised by the Steering Committee are to have their extra hours involvement counted in their personal overtime record.
- Allocation of Overtime
    - For all unscheduled area overtime each area shift work group will provide a list of Technicians to the Shift Supervisors, who are available to be called during their duty overtime period. This list should contain correct phone numbers or addresses and ensure that all positions/skills for the particular areas are capable of being covered. Pagers will be available as required.
    - All scheduled overtime is to be offered by an area shift PT7 preferably on the morning of the last day shift.
    - All overtime worked or on standby will be credited a minimum of four hours. All over-

time should default to the duty shift.

- Cancellation of Overtime

  If overtime is cancelled more than 24 hours prior to the proposed starting time of the overtime shift, there will be no penalty. If overtime is cancelled less than 24 hours prior to the proposed starting time of the overtime shift then four (4) hours overtime will be credited.

- Coverage of Shipping

  Shift Supervisors will use best estimates for planning shipping coverage. Once ships are along side, estimated discharge and loading rates are to be used to schedule overtime requirements.

  Manning of the second Jetty will be covered by spare RPTs or refinery wide overtime. Staffing of the third jetty will be as permitted by utilising spare technicians or by mutually agreed overtime.

- Area Support Technicians & Fully Trained Maintenance Workers
  - Area Support Technicians may be required to work overtime during day shift hours.
  - Maintenance workers should be trained to be capable of relieving Area Support Technicians or shift posts left vacant because of long term sickness, to assist with heavy workload periods or for purposes agreed by the Steering Committee.
  - Area Support Technicians to be capable of covering at least 2 areas of responsibility as listed in Appendix 4 of this document.

OVERTIME COMPONENTS

- Cover for short term sick leave.
- Cover for Long Service Leave including the backlog. (By agreement of Area Work Group).
- Cover for non Annual Leave eg Special, Jury etc.
- Cover for startups and shutdowns whether planned or unplanned.
- Cross area cover where workload is high.
- Cover business needs as agreed with the appropriate workgroups. (Overtime worked for this item should not exceed 2%).

OVERTIME COVER FOR EVENTS NOT LISTED WILL ONLY OCCUR WITH THE EXPRESSED AGREEMENT OF THE STEERING COMMITTEE.

APPENDIX 8

WORK GROUP AND ORGANISATIONAL STRUCTURE

The following business strategy is a fundamental part of this current agreement between the AWU/CMETU and the Company. The implementation and communication of the BP Refinery (Kwinana) Pty Ltd Agreement 1996 will be addressed by a series of work groups.

Steering Committee

This committee will consist of:

- Operations Manager (as needed)
- Process Managers
- Senior Employee Relations Officer or Delegate
- One Shift Supervisor
- Five Senior Union Delegates

The terms of reference for this Committee will be:

- To review on a regular basis the operation of this agreement in its true intent.
- To review reports and recommendations from Area Work groups, Shift Area Work groups, and Refinery Shift Work groups.
- To provide interpretation of the agreement should this be required.
- Formulate additional policy as necessary, with consent from all represented unions.
- To arbitrate in the case of disagreement between or among work groups.
- All area Work Groups, Shift Area Work Groups and Refinery Shift Work Groups must comply with all Steering Committee directives.

Area Work Group

This group will consist of:

- One representative from each of the Shift Area Work Groups (5)
- One Day Technician
- One Area Supervisor
- One Shift Supervisor

Facilitated by the responsible Process Manager.

The terms of reference of this group will be:

- Responsible for formulating and implementing area policy and procedures within the guidelines of this agreement, eg
  - Monitor manning levels, identify and resolve problems as they arise
  - Determine appropriate manning levels for different modes of operation (eg normal, start up and shut down)

Shift Area Work Group

This group will consist of all shift members within an area, including the Shift Supervisor(s).

The terms of reference for this group will be:

- implement policies and procedures laid down by the Area Work Group or Steering Committee.
- identify and report any areas of concern to the Area Work Group or Steering Committee.
- establish "safe" and "efficient" work procedures and ensure they are strictly adhered to.

Refinery Shift Work Group

This group will consist of:

- Two representatives from each area
- Two Shift Supervisors

The terms of reference for this group will be:

- Monitor shift manning levels with respect to on-shift training, compassionate, special leave requests, sickness, inter-area cover according to Area Work Group guidelines.
- Monitor and control fair distribution of overtime across the shift.

BRINKWORTH DRAINAGE CONTRACTORS INDUSTRIAL AGREEMENT
No. AG 98 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Brinkworth Drainage Contractors.

No. AG 98 of 1996.

Brinkworth Drainage Contractors Industrial Agreement.

COMMISSIONER A.R. BEECH.

8 May 1996.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant, and there being no appearance 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 Brinkworth Drainage Contractors Industrial Agreement be registered as an industrial agreement in

accordance with the following Schedule with effect on and from the 29th day of April 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Brinkworth Drainage 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Desmond Brinkworth, Joanne Brinkworth and Raymond Brinkworth trading as Brinkworth Drainage Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award").

(2) There are approximately two employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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—Wage Rates.

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 company to the Union Education and Training Fund.

(2) (a) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the company, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The company's approval shall not be unreasonably withheld.

(b)The application for leave shall be given to the company at least two weeks in advance of the date of commencement of the course.

(c) The time of taking leave shall be arranged so as to minimise any adverse effect on the company's operations. The onus shall rest with the company to demonstrate an inability to grant leave where an employee is otherwise entitled.

(d) The company 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.

(e) For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

(f) Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (2) of this clause 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.

(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 on and from the 29th April 1996 the following will apply—

(a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(b) 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In Payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

(3) If the company has been paying an employee an all-in rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

Common Seal

K.N. Reynolds

Signed on behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

R.P. Brinkworth

Signed on behalf of Brinkworth Drainage Contractors

Dated this 28th day of March 1996.

APPENDIX A—WAGE RATES

	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

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to dis-

cuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

CGO PAINTING CONTRACTORS DOMESTIC AND MINOR INDUSTRIAL AGREEMENT
No. AG 114 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

CGO Painting Contractors.

No. AG 114 of 1996.

CGO Painting Contractors Domestic and Minor Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 CGO Painting Contractors Domestic and Minor Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the CGO Painting Contractors Domestic and Minor 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories
Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Phillip Collopy, Peter Glasson and Malcolm Owers trading as CGO Painting Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award").

(2) This agreement applies only to domestic and minor repaint and maintenance work with a contract value less than $50,000.

(3) This agreement covers approximately two employees.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 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—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment of $40.00 into the Western Australian Construction Industry Redundancy Fund and $40.00 into the Construction + Building Unions Superannuation Scheme.

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

A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund. This payment will only be made after further consultation between the parties on a commencement date for payment.

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.

(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 signing 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

P.L. Collopy

On behalf of KBE Contracting Pty Ltd

Dated this 17th day of April 1996.

APPENDIX A—WAGE RATES

	4% 1 December 1995 Hourly Rate $	4% 1 March 1996 Hourly Rate $	4% 1 August 1996 Hourly Rate $	3% 1 February 1997 Hourly Rate $
Labourer Group 1	12.81	13.31	13.80	14.17
Labourer Group 2	12.38	12.85	13.33	13.69
Labourer Group 3	12.04	12.51	12.97	13.32
Plasterer, Fixer	13.32	13.83	14.35	14.73
Painter, Glazier	13.02	13.52	14.02	14.40
Signwriter	13.29	13.80	14.31	14.70

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protec-

tion of this programme.

- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

CGO PAINTING CONTRACTORS INDUSTRIAL AGREEMENT.

No. AG 113 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

CGO Painting Contractors.

No. AG 113 of 1996.

CGO Painting Contractors Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 CGO Painting Contractors Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the CGO 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Phillip Collopy, Peter Glasson and Malcolm Owers trading as CGO Painting Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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, other than those covered by the CGO Painting Contractors Domestic and Minor Industrial Agreement, on work covered by the terms of the Building Trades (Construction) Award 1987, No. R 14 of 1978 (the "Award").

(2) There are approximately 2 employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 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—Wage Rates.

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 inability 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 subclause (2) of this clause 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.

(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 signing 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

P.L. Collopy

On behalf of KBE Contracting Pty Ltd

Dated this 17th day of April 1996.

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1996	1 February 1996
	Hourly Rate $	Hourly Rate $	Hourly Rate $
Labourer Group 1	14.21	14.66	15.11
Labourer Group 2	13.71	14.15	14.59
Labourer Group 3	13.35	13.77	14.20
Plasterer, Fixer	14.76	15.23	15.70
Painter, Glazier	14.43	14.89	15.35
Signwriter	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.

- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs:

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

COCKBURN HIRE ENGINEERING ENTERPRISE AGREEMENT No. AG 96 of 1996.

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 Hire.

No. AG 96 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

13 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr P. Sumich 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 following schedule titled the "Cockburn Hire Engineering Enterprise Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 9th day of May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. — TITLE

This Agreement shall be known as the Cockburn Hire Engineering Enterprise Agreement.

2. — ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Background
7. Dispute Resolution
8. Objectives
9. Commitments
10. Consultative Committee
11. Wages and Hours
12. Productivity Measures
13. Renewal of Agreement
14. Endorsement of Agreement
16. Signatories

3. — AREA AND SCOPE

This Agreement shall apply to Cockburn Corporation Limited T/A Cockburn Hire (the Company) with respect to all employees employed by the Company as engineering trades people or production people in its operations within the State of Western Australia. This Agreement does not apply to Cockburn hire employees employed in the Pilbara and Goldfield Regions of Western Australia.

4. — RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades' (General) Award No. 13 of 1965. In the event of any inconsistency the conditions prescribed in this Agreement shall prevail.

5. — PARTIES BOUND

(1) Parties to this Agreement are—

(a) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (the Union).

(b) Cockburn Corporation Limited T/A Cockburn Hire (the Company).

(2) This Agreement shall be binding on—

(a) Cockburn Corporation Limited T/A Cockburn Hire (the Company).

(b) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Industries Union of Workers—Western Australian Branch (the Union).

(c) Employees employed by the Company as Engineering Trades people or Maintenance or Production Employees in its operations within the State of Western Australia (the Employees).

6. — DATE AND PERIOD OPERATION

(1) This Agreement shall operate for a period of 2 years from the date of ratification by the Western Australian Industrial Relations Commission.

(2) This Agreement provides that wage increases other than those prescribed shall not be made during its life, except when consistent with a Wage Case decision of the Western Australian Industrial Relations Commission.

7. — BACKGROUND

(1) Following negotiations between the Company, employee-elected representatives and a representative from the Union in the form of a single bargaining unit, agreement has been reached according to the principles of the Enterprise Bargaining process.

(2) The purpose of this Agreement is to tailor employment

conditions which are Company specific to increase productivity for the Company and at the same time increase benefits for employee.

(3) The Company is presently undergoing considerable change with a new management direction. The aims of the new management team are to—

(a) Consolidate the hire business.

(b) Establish contract services.

(c) Identify and establish other products.

(d) Expand the Company.

(4) In order to achieve these aims a set of Company objectives has been identified—

(a) To be totally customer focused.

(b) To have and retain the best people.

(c) To provide the best service quality.

(d) To exceed annual revenue and profit growth targets and continue to grow in a vigorous and profitable way.

To achieve these objectives a team commitment is required. This team must be made up of staff who are both trained and committed to meet these objectives.

(5) By utilising the Enterprise Bargaining principle we, as a Company, hope to develop a team of staff who are flexible and skilled in the areas needed to develop the Company as market leader in the hire industry.

(6) To each employee of the Company we want to be able to offer rewards for service excellence and provide the opportunity for a well defined career path within the Company which would prove beneficial to both parties. This Agreement defines the method for career advancement within the Company. This will mean change, but if the change is implemented effectively the Company can continue to grow in competitiveness and profitability and be able to offer employment security, expanding employment opportunities and improved wages and conditions.

(7) Benefits to employees from this Agreement are—

(a) Increase in wages as per Appendix I—Structure of Job Classifications.

(b) Incorporating any previous bonus payments into the new hourly rates which means an increase to any overtime payments.

(c) Defined skills required for each different pay level along with a proposed structured training program will enhance advancement prospects within our Company.

(d) Improved workplace communication and a more congenial environment.

(e) The opportunity for increased input into workplace issues.

(f) Work performed to a higher level will attract the appropriate higher level pay rate.

(8) Benefits to the Company from this Agreement are—

(a) Develop a workplace team which is skilled and flexible and able to meet all the Company requirements.

(b) More efficient payroll control.

(c) Training which provides skills to give greater productivity and utilisation within the Company.

(d) A defined workplace skill level for better utilisation of human resources.

(e) Ability to respond more quickly and more efficiently to customer requirements.

8.—DISPUTE RESOLUTION

(1) The objective of this procedure is to promote the resolution of disputes by measures based on consultations, co-operation and discussion to avoid interruption to the performance of work and the consequential loss of production and wages.

Step 1. Discussions between the employee/s concerned and the immediate supervisor. If not resolved move to Step 2.

Step 2. Discussions involving the employee/s concerned, the employee representative and the Company representative. If not resolved move to Step 3.

Step 3. Discussions involving representatives from the Union and the Company representative. If not resolved move to Step 4.

Step 4. Discussions involving a Union official and a senior management representative(s). If not resolved move to Step 5.

Step 5. The parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for arbitration.

(2) In order to allow the peaceful resolution of grievances, the parties shall be committed to avoid stoppages of work, lockouts, or any other bans or limitations on the performance of work while the procedures of resolution and conciliation are in progress.

9. — OBJECTIVES

The objectives of this Agreement are—

(1) The beginning of a new culture which emphasizes that the employer/employee relationship is one of teamwork.

(2) To provide a framework which will enable the Company to become a more profitable and competitive organisation that provides challenging employment opportunities and a satisfying work environment for all employees.

(3) To provide all employees with enhanced opportunities to develop their skills and to demonstrate abilities over a broader range of competencies.

(4) To provide all employees with the opportunity of career advancement within the Company which would be beneficial to both the Company and its employees.

(5) To increase the productive performance of the Company by improving—

(a) Cost effectiveness.

(b) Service quality.

(c) Customer relationships.

(d) Supplier relationships.

(e) Training which is Company oriented.

(f) Teamwork.

(g) Flexibility.

10. — COMMITMENTS

The parties to this Agreement and all persons bound are committed to ensuring that—

(1) This Agreement will produce or demonstrative productivity gains.

(2) Improvements are made, but not limited, to work organisation, product and service quality, customer service, employee training and any other issue identified by the parties as contributing to improved productivity and market performance.

(3) All relevant forms required for the recording of maintenance costs will be completed by the Engineering Trades' employees.

Examples of these are not but limited to—

Major Service & Repair Docket

Daily Service & Job Log

Parts Requisitions

Breakdown Report

The Consultative Committee will be involved in the development of all future forms as the requirement arises.

(4) The Company and employees are committed to ensuring the certification of the Company to Australian Standard AS9002 with the aim of utilising quality assurance as an ongoing improvement tool.

11. — CONSULTATIVE COMMITTEE

(1) The Consultative Committee will comprise 6 people—

(a) Three management representatives.

(b) Three employee elected representatives.

(2) The Consultative Committee shall be committed to ensuring all decisions are in line with our Company objectives.

(3) Committee meetings will be held every second month during normal working hours. Special meetings of the committee may be called as required.

(4) The Consultative Committee will play a key role in creating a culture of continuous improvement at each branch, enhancing the opportunities and job security of its employees and facilitating the successful introduction of change on an ongoing basis.

(5) The primary role of the Consultative Committee is to identify and assist with the implementation of productivity issues and to establish performance indicators designed to improve the productive performance of the Company.

(6) The Consultative Committee shall also provide an extra communication link between employees and management to complement the existing "open door" philosophy of all management personnel.

12.—WAGES AND HOURS

(1) Hours—

(a) The normal working week is to be 38 hours excluding overtime.

(b) Penalty rates will only be paid after the completion of 7.6 ordinary hours' work on any week day.

(c) The spread of hours will be 0600-1800, Monday to Friday. If required by the employee's supervisor (to meet customer requirements), the starting time can be altered to any time within the above spread of hours, with penalty rates payable only after the completion of 7.6 hours' work on any week day. Notice of the new start time is to be given prior to the end of work on the preceding day. This shall be by agreement but will not be unreasonably refused.

(d) No rostered days off.

(e) Any employee who is absent from work for 5 consecutive days without contacting a Company representative will be considered to have abandoned his/her employment.

(f) Employees currently on wage rates higher than the levels incorporated in this Agreement will receive increases of 3.5% rather than 4% until further agreements catch up to his/her present rates.

(g) Two days sick leave per year can be used for the purpose of caring for ill family members provided a medical certificate is provided.

(h) Bereavement leave provided by the Award is extended to cover in-laws or defacto in-laws of employees.

(i) The Company undertakes to pay for the workers' compensation premium for coverage of employees on their direct journey from home to work and return.

(2) Wages—

(a) The employees covered under this Agreement shall be able to be paid at different levels. These scales of pay will be dependent upon the skills level of each employee and tasks performed by each employee. Pay levels will be as per paragraph (2) (e) of this clause.

(b) To perform tasks associated with a certain level an employee must first demonstrate skills which are applicable to that certain level and the Company must have a need for that task to be performed.

(c) For details of skill levels and task requirements for each pay level see Appendix I—Structure of Job Classifications.

(d) Wages will be paid fortnightly by electronic funds transfer. One month's notice will be given by the employer prior to implementing this change.

(e) 17½% leave loading is incorporated into the wage structure and no additional loading shall be paid upon taking of accrued annual leave.

(f) Higher duties will be paid for any periods of work done at a higher level which exceeds one normal working day.

(i) On completion of the higher duties the employee reverts back to his/her normal level of pay.

(ii) If any employee has been acting at a higher level for a continuous period of 3 months that employee will be recognised as being at the higher level permanently.

(g) Apprentices will be paid the appropriate percentage of a Level 3 Trades' person as below—

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

(h) The levels of pay will be as follows, as a weekly rate—

	At Ratification	First Anniversary	18 Months
Level 1—Service Person	$442	$458	$487
Level 2—Trades Person	$499	$518	$549
Level 3—Trades Person	$530	$550	$582
Team Leader	$563	$585	$618

(i) These rates of pay will commence on the first pay period on or after ratification of this Agreement. Increases will occur at the anniversary date of ratification and six months thereafter.

(j) Levels may be reviewed by the appropriate Committee based on the performance of the employees concerned against the productivity measures which form part of this Agreement.

(k) Persons employed by the Company at the time of this Agreement is ratified and who are not qualified but are deemed to be highly skilled in their particular sphere will continue to be employed at that level.

13. — PRODUCTIVITY MEASURES

The productivity measures shall include but not be restricted to—

(1) (a) Level of re-work.

(b) Completion of all relevant maintenance recording forms.

14. — RENEWAL OF AGREEMENT

The parties agree that they will commence a review of the terms and conditions of this Agreement three months prior to the expiry date of this Agreement. Any changes to wages or conditions in the subsequent agreement will be backdated to the expiry date of this Agreement.

15.—TRAINING

Employees agree to undertake any training required by the Company which will improve skill levels, efficiencies and productivity while maintaining safe work practices. This includes up to 38 hours training per year in the employee's own time and at the Company's request. This time is not cumulative and may not exceed 10 hours in any three month period. The Consultative Committee will make recommendations on training requirements.

16. — ENDORSEMENT OF AGREEMENT

This Agreement has been negotiated between the Company and employees. The content of the Agreement has been reviewed with all parties and they have entered into the agreement with full knowledge as to the content and effect of this document.

17. — SIGNATORIES

The Agreement is agreed between the parties whose signatures appear below.

Signed for and on behalf of Cockburn Corporation Limited T/A Cockburn Hire

M Westbrook
Managing Director

29/3/96
Date

Signed for and on behalf of J. Ferguson
Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union
of Workers—Western Australian Branch

29/3/96
Date

APPENDIX I—STRUCTURE OF JOB CLASSIFICATIONS

(1) Overview—

Classifications are based on the progressive acquisition of skills and / or training and application of skills and form the career path which determines the pay rate structure.

Appointment to any pay level in the classification structure is contingent upon such additional work being available and required to be performed by the Company.

(2) Classification Criteria—

Within the Company employees employed as mechanics or service people in its operations within the State of Western Australia will be classified into one of three pay levels.

These are—

Level 1	Service Person
Level 2	Trades Person
Level 3	Trades Person
Team Leader	Leading Hand or other supervisory type work

LEVEL 1: SERVICE PERSON

A person capable of performing the following work tasks—

Interpersonal skills
Cleaning of machines
Refuelling
Changing oils
Changing filters
Assist Trades people in major repairs
Forklift driving, loading, unloading
Carry out deliveries and pickups
WA "B" class driving licence
Ability to communicate both verbally and in writing with fellow employees
Hire counter ability
Minor repairs unsupervised

Advancement to Level 2 will require the acquisition of appropriate trade certificates or appropriate certificates.

LEVEL 2: trades person

As well as being willing and capable of performing the tasks required of a Level 1 Service Person, the following skills or qualifications are required—

- Trade certificates or appropriate certificates
- Interpersonal skills
- Petrol and diesel engine maintenance
- Fuel systems
- Fault diagnosis
- Parts ordering
- Technical drawing and Manuals interpretation
- Basic welding skills
- Basic machining skills
- Appropriate skills dependent on trade
- Ability to work unsupervised
- Quality inspection of own work
- Willingness and ability to relocate within the Company's branch network
- Ability to work within parameters as set out in the Company's Quality Assurance Program
- Hire counter ability

Advancement to Level 3 would require the person to undergo training provided by the Company on a needs basis and also the additional work required of a Level 3 must be available and required to be performed by the Company.

LEVEL 3: TRADES PERSON

As well as possessing the skills and qualifications and being willing and able to perform all the duties of a Level 2, the person must also show capability and relevant skills levels in 5 of the criteria listed below—

- Major components rebuilding
- Specialist and Equipment overhaul
- Senior Branch mechanic
- Work costing
- Design ability
- Maintenance Planning

The person must be totally self responsible and be able to assume the responsibility of a Team Leader.

Advancement of a Team Leader is only achievable if the requirements of a Team leader are met and the position is required to be filled by the Company.

TEAM LEADER: SUPERVISORY RESPONSIBILITIES

As well as possessing the skills and qualifications and being willing and able to perform all the duties of a Level 3, the person must show capability in the following—

- Interpersonal Management
- Supervision
- Work Organisation
- Labour Utilisation
- Company Representation
- Maintenance Management

For a branch to require a Team Leader they must have a total of at least 4 maintenance personnel.

Advancement from this position would be to management level if the person fits the requirements of a Manager after the position vacancy and job specification is advertised by Cockburn Hire. This depends upon the person's application being successful for such a position.

Branches run with a single Trades Person, will require a Level 2 Trades Person.

Branches run with multiple Trades people, will require a Level 3 Trades Person with the balance being made up of Levels 1 and 2.

All position vacancies will first be offered internally to ensure the prospects of advancement within Cockburn Hire are maximised. This does not necessarily mean all new vacancies for positions will be internally filled as skills and abilities are major considerations in the selection process.

DELTA CORPORATION LTD, HERNE HILL ENTERPRISE BARGAINING AGREEMENT 1995 No. AG 91 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Delta Corporation Limited.

No. AG 91 of 1996.

Delta Corporation Ltd, Herne Hill Enterprise Bargaining Agreement 1995.

COMMISSIONER A.R. BEECH.

9 May 1996.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and Mr A. Carpenter 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 Delta Corporation Ltd, Herne Hill Enterprise Bargaining Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule with effect on and from the 29th day of April 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Delta Corporation Ltd, Herne Hill Enterprise Bargaining 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. Quality Assurance
13. Industry Standards
14. Rostered Days Off
15. Rates of Pay
16. Training Allowance, Training Leave, Recognition of Prior Learning
17. Inclement Weather
18. Flexibility and Continuity of Employment
19. Sick Leave Entitlement
20. No Further Claims
21. Redundancies
22. Bonus Scheme
23. Clothing and Footwear
24. Disciplinary Procedure
25. Signatories

3.—INTRODUCTION

(1) Joint Statement

This agreement between Delta Corporation Ltd (the company) and its employees and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the union) defines the relationship between the company's employees and all levels of management.

It recognises the value of all the above parties working co-operatively towards maintaining and improving the competitiveness of the company.

This agreement is 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 develop a working environment consistent with a manufacturing operation.

(b) To identify the advantages available through working co-operatively.

(c) To encourage and maintain full and open communication consultation and resolutions of issues as they arise.

(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 precasting process.

4.—APPLICATION AND SCOPE OF THE AGREEMENT

(1) This agreement shall apply to the company and those of its employees that are engaged in classifications contained in the Building Trades (Construction) Award 1987 No. R 14 of 1978 (the award) at 218 Campersic Road, Herne Hill in the state of Western Australia.

(2) (a) This agreement shall be read wholly in conjunction with the award.

(b) The parties agree that, with respect to those employees covered by this agreement of which there are approximately 35, the company's precasting operations are for the manufacture of materials used in the building and construction industry.

(c) This agreement shall apply where there are inconsistencies with the award.

5.—PERIOD OF OPERATION

This agreement shall operate on and from the 29th April 1996 and shall remain in force until 31 July 1997.

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 and settlement procedures provided for in Clause 10.—Dispute Avoidance and Settlement Procedure are rigorously adhered to.

(b) Payment for time lost due to industrial disputes will not be claimed (or paid) other than described in Clause 10.—Dispute Avoidance and Settlement Procedure.

7.—UNION REPRESENTATION

(1) This agreement recognises that the union and its accredited representatives are legitimate representatives of the employees covered by this agreement.

(2) The rights of accredited union officials to access the precasting operations at Herne Hill 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 production 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;

(b) after proper consultation has occurred with the company's employees and management;

(c) if one month's written notice has been given to the company; and

(d) after application for termination has been given to the Western Australian Industrial Relations Commission pursuant to s.43 of the 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;

(b) if the company has exhausted the dispute avoidance and settlement procedure contained in clause 10.—Dispute Avoidance and Settlement Procedure; and

(c) if one month's written notice has been given to the union and application has been made to the Western Australian Industrial Relations Commission pursuant to s.43 of the Industrial Relations Act 1979.

9.—CONSULTATIVE COMMITTEE

(1) The parties agree to the establishment and maintenance of the Consultative Committee. This committee shall be consulted about and monitor all 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 general manager of the company or their nominees may attend the Consultative Committee meetings.

(5) The Consultative Committee will comprise representatives from management and workforce in equal numbers.

10.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURE

In relation to disputes, questions, or difficulties arising out of this agreement the procedure shall be as follows.

(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 production manager of the company.

(c) If not settled at this stage the union delegate/shop steward may submit the matter to the union organiser for discussion with the general manager.

(d) If not settled at this stage the union organiser may submit the matter to the union secretary for discussion with the general manager.

(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

Should any dispute arise to the applications 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.—QUALITY ASSURANCE

(1) Each employee is committed to the company's Quality Assurance System (ISO9002:1987, AS3902:1987, NZS 9002:1900) and employees will carry out any task required in which they are competent, to ensure that the obligations to conform to the Quality Assurance System are complied with.

(2) The company and its employees are committed to provide products and service of the highest possible standards.

13.—INDUSTRY STANDARD

The company will continue to meet its obligations to the following non-wage benefit schemes for the life of the agreement.

(1) The WA Construction Industry Redundancy Fund.

(2) Increase the level of payment into the Construction and Building Unions Superannuation Scheme to $50.00 per week per employee

14.—ROSTERED DAYS OFF

(1) The parties to this agreement acknowledge that a more flexible arrangement for the taking of RDOs will improve the efficiency of the precasting operations.

(2) (a) Where, at any time the need arises to work on a designated RDO, then arrangements shall be agreed between the company and the union's representative at the factory.

(b) Employees' choice of working on an RDO shall be optional.

(c) Before an employee agrees to work on an RDO arrangement for an alternate RDO to be taken must be made.

(d) Payment terms and conditions for working on an alternate RDO will be as per the award.

15.—RATES OF PAY

The parties to this agreement are committed to ensuring that the measures contained in this agreement lead to real gain in efficiency. Accordingly, the following increases have been agreed to.

(1) Employees covered by the terms of this agreement shall receive, in addition to the rates of pay contained in the award, a precast allowance of $1.75 per hour for all hours worked, increasing to $2.00 per hour from 1 May 1996.

(2) The allowance prescribed in subclause (1) of this clause will not count for all purposes of the award and will therefore not attract any premium of penalty.

(3) In addition the following hourly rate increases will apply—

LABOURERS	GROUP 1	GROUP 2	GROUP 3
	$ per hour	$ per hour	$ per hour
On and from 29th April 1996	14.21	13.71	13.35
1st August 1996	14.66	14.15	13.77
1st February 1997	15.11	14.59	14.20

16.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of 20 cents per hour per employee shall be paid by the company to the Union Education and Training Fund.

(2) (a) Subject to all qualifications in this clause, an employee shall, upon application in writing to and the approval of the company, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The company's approval shall not be unreasonably withheld.

(b) The application for leave shall be given to the company at least two weeks in advance of the date of commencement of the course.

(c) The time of taking leave shall be arranged so as to minimise any adverse effect in the company's operations. The onus shall rest with the company to demonstrate an inability to grant leave where an employee is otherwise entitled.

(d) The company 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 earning for such absence.

(e) For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

(f) Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (2) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

17.—INCLEMENT WEATHER

It is agreed by the company and the employees that, should the weather become inclement during normal working hours and it appears that such inclement weather conditions shall not cease then, to minimise disruption to production, the following procedure is to be adopted.

(1) Heat

Should the forecast indicate that the temperature will exceed 37.5ºC then production priorities will be set for that day.

If the temperature reaches that forecast these set priorities will be completed: tools and equipment will be cleaned, stored and made safe and employees will cease work.

However if the temperature does not reach the forecast temperature of 37.5ºC work will continue as normal.

(2) Wet Weather

Should the forecast indicate rainy conditions then, as for subclause (1) of this clause, priorities will be set for that day.

Upon completion of production priorities, and if wet weather conditions continue, then it is agreed that employees will cease work.

It is also agreed that, during wet weather, work will continue provided that it is under a covered area. Employees normally working in an open area will, where practicable, move into the covered areas and continue work.

Except for extremely heavy rain employees will transfer from lunch rooms after a meal break to an undercover workplace and continue work.

18.—FLEXIBILITY AND CONTINUITY OF EMPLOYMENT

For the purposes of improving continuity of employment and flexibility of all employees of the company at Herne Hill it is agreed that a pool of employees who agree to participate will be formed and each employee agrees to abide by conditions of participation applicable at the time.

(1) In the event of a downturn in work employees from the pool will be transferred into another area of the company not engaged in product manufactured for the building construction industry.

(2) Where an employee is transferred into a position in another area and that position may have different pay and conditions to it, then the employee will receive the pay and conditions for that position and not his/her previous position.

(3) For the purpose of this agreement, notwithstanding what section an employee is currently working, the employee's length of service and seniority for the purposes of future reduction in manpower will be deemed continuous if the employee withdraws from this agreement, seniority and length of service shall revert to the date that the employee joined the company.

19.—SICK LEAVE ENTITLEMENT

For sick leave accrued on and from the 29th April 1996 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) Sick leave will be accrued in accordance with the award for the first twelve months of service. Thereafter, sick leave will be accrued at the rate of 6 2/3 hours per month for the purpose of this agreement.

Any sick leave accrued prior to the signing of this agreement shall not qualify for payment but shall remain a credit for sick leave in case of illness.

(3) If an employee who has been terminated by the company without exercising the above option and is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

20.—NO FURTHER CLAIMS

Neither the union nor its members shall make any claim against the company for any increase in rates remuneration or make any other claim at all while this agreement is current except for national or state award movements.

21.—REDUNDANCIES

(1) For the purpose of termination employees due to lack of work the last on first off principle will apply "all things being equal" within the following categories—

(a) labourers

(b) steel fixers

(c) plant operators

(d) leading hands.

(2) The obligation on the company to re-employ employees previously made redundant will be limited to three months.

22.—BONUS SCHEME

Productivity bonus schemes will be introduced for employees of this agreement. The following principles govern the payment of bonuses—

(1) Bonuses are at the discretion of the employer, however discussions with the Consultative Committee will be held prior to application.

(2) All classification of employees covered by this agreement shall be eligible to receive bonuses.

(3) Bonuses will be applied separately within the divisions and according to output of individual products within each division. The exception to this shall be those employees who are not directly involved in product manufacture where an average of the bonuses paid will apply.

(4) Bonus payments will be determined according to two criteria—

(a) production quotas

(b) quality.

23.—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.

24.—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.

25.—SIGNATORIES

Signed by Kevin Reynolds:

Secretary

For and on behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Dated: 1.3.1996

Witness: G. Giffard

Dated: 1.3.1996

Signed by Matt Perrella

For and on behalf of Delta Corporation Limited

Dated: 19.3.1996

Witness: Patricia Mooney

Dated: 19.3.1996

DEPARTMENT FOR THE ARTS (ENTERPRISE BARGAINING) AGREEMENT—1996
No. PSA AG 6 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department of the Arts.

No. PSA AG 6 of 1996.

Department of the Arts (Enterprise Bargaining) Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER A.R. BEECH,

15 May 1996.

Order.

HAVING heard Mr R. O'Byrne on behalf of the Applicant and Mr R. De Blank and with him Mr A. Griffiths 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 Department of the Arts (Enterprise Bargaining) Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule commencing the first pay period on and from the 15th day of April 1996.

(Sgd.) A.R. BEECH,
[L.S] Public Service Arbitrator.

Schedule.

1.—TITLE

This Enterprise Agreement shall be known as the Department for The Arts (Enterprise Bargaining) Agreement—1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees Covered
6. Date and Period of Operation and Review
7. Relationship to Parent Awards
8. Single Bargaining Unit
9. Shared Mission for the Department for the Arts
10. The Consultative Process to Achieve this Agreement
11. What Do We Want To Achieve Through Enterprise Bargaining?
12. Objectives Of This Agreement And Steps To Get There
13. Strategic Issues to Improve Productivity
14. Workplace Change Initiatives to Improve Productivity
15. Workplace Cost Reduction Initiatives
16. Past Productivity Initiatives
17. Parental Leave
18. Consultative Processes
19. Dispute Resolution Procedures
20. Salary Increases
21. Federal and State Wage Principles

3.—SCOPE

The Agreement shall apply to the Department for the Arts employees in Western Australia eligible to be members of the Civil Service Association of Western Australia (Inc.)

4.—PARTIES BOUND

(1) The Employer—

The Executive Director of the Department for the Arts.

(2) The Union—

The Civil Service Association of Western Australia (Inc.)

(3) The parties bound by this Agreement will oppose any subsequent application by any body or organisation to be joined to this Agreement.

5.—NUMBER OF EMPLOYEES COVERED

It is estimated that 34.5 employees will be covered by this Agreement.

6. DATE AND PERIOD OF OPERATION AND REVIEW

(1) This agreement shall be registered in the Western Australia Industrial Relations Commission (WAIRC) and shall operate from the beginning of the first pay period commencing on or after the date of registration and shall remain in force until 31 December 1997.

(2) The parties will review this agreement six months prior to the date of expiration of this agreement as to the renewal or replacement of the agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(4) During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis for future negotiations.

(5) Following the process of reviewing this agreement it will be renewed or replaced by another agreement or cancelled as appropriate.

The pay quantums achieved and the working arrangements introduced as a result of this agreement will remain and form the base for future agreements or continue to apply in the absence of a further agreement.

(6) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the WAIRC.

7.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992 provided that, where there is any inconsistency, this agreement shall prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

(1) The Organisations of employees covered by this agreement have formed a Single Bargaining Unit (SBU) in accordance with the requirements of the January 1992 State Wage Case Decision of the Western Australian Industrial Relations Commission (72 WAIG 191) and the October 1991 National Wage Decision of the Australian Industrial Relations Commission (PRINT KO300).

(2) The SBU has held negotiations with the Department for the Arts and reached full agreement on the terms of this agreement.

(3) This agreement has been presented to employees of the Department for the Arts who have endorsed it.

9.—SHARED MISSION FOR DEPARTMENT FOR THE ARTS

(1) The Parties to this agreement are committed in striving to achieve the Department for the Arts mission which is—

TO ENSURE ALL WESTERN AUSTRALIANS HAVE REASONABLE ACCESS TO QUALITY ARTS ACTIVITIES AND CULTURAL EXPERIENCES AND TO ENCOURAGE THE ECONOMIC VIABILITY OF THE ARTS AND CULTURAL INDUSTRY

(2) In achieving our mission we have three primary objectives which shape the way we will operate. These are—

- Arts Portfolio Integration

  Facilitate the adoption of policies and initiatives for arts and cultural development across the Arts Portfolio
- Cultural Industry Development

  Maximise the integration of arts and culture into the economic and social activities of the State.
- Arts Investment

  Provide access to a wide range of high quality arts activities for the people of Western Australia.

10—THE CONSULTATIVE PROCESS TO ACHIEVE THIS AGREEMENT

(1) In order to achieve this agreement the parties agreed to form a Single Bargaining Unit, comprising management, employees and union representatives.

(2) The process established in arriving at this agreement involved regular consultative meetings between the CivilService Association of Western Australia (Inc.), the Department for the Arts and employee representatives.

(3) All staff were consulted on the benefits they wished to derive from an enterprise agreement. They were also invited to contribute to the identification of past productivity and, more importantly, to identify future productivity and cost savings initiatives.

(4) Accordingly, many of the initiatives for "working smarter" outlined in this agreement were identified by staff, and in some cases staff are already implementing them.

(5) The consultation process took the form of planning workshops (both all-of-Department and smaller groups). Staff were kept informed about progress with the Bargaining process through regular communication updates, and they were also given several opportunities to comment on various drafts of the Enterprise Agreement.

(6) The approval process involved all employees at the workplace. All employees received a copy of the agreement in advance of an explanatory overview provided in the workplace. Employees then voted, resulting in endorsement of the agreement.

(7) These processes will cease to exist once this agreement is ratified by the Western Australian Industrial Relations Commission.

11.—WHAT DO WE WANT TO ACHIEVE THROUGH ENTERPRISE BARGAINING?

The Department for the Arts is a quality organisation that will continually strive to improve its business processes and performance. Enterprise Bargaining will assist this by—

(1) Improving the quality of working life for all our employees.

(2) Facilitating an efficient improvement process by encouraging all employees, management and workforce, to identify and deal with real productivity barriers in a participative manner.

(3) Continuous improvement of all processes to achieve reduced cost, less waste and improved quality, technology, work organisation, customer service, delivery, timeliness, safety and training.

(4) Employees having a strong focus on satisfying internal and external customer service.

(5) Encouraging and facilitating teamwork and team performance with the ultimate objective of achieving self-managed work teams with effective leadership at all levels.

(6) Staff development, by which individuals can develop their competencies individually and collectively to meet the Department's needs.

(7) Employees co-operating with each other and other work teams.

(8) Employees collecting and using necessary data to improve organisational performance.

(9) Consolidating consultative processes to build an organisation in which everyone contributes and performance is rewarded.

(10) Identifying benchmarks as a basis for auditing the whole organisation on a regular basis.

(11) Continuing and supporting the programme of structural efficiency and workplace reform commenced in 1989. The programme of work to be completed is contained within the various Memorandums of Agreements, Awards, understandings and agreements reached in various formal consultative forums.

12.—OBJECTIVES OF THIS AGREEMENT AND STEPS TO GET THERE

(1) In accordance with the National and State Wage Fixing Principles, the parties acknowledge that a broad agenda must be considered in the implementation of improved productivity within the Department for the Arts.

(2) The following three sections outline the mutual approach between employees and management to improve work performance and the achievement of both internal Departmental objectives and the wider portfolio objectives of improving the effectiveness and efficiency of the administration of the arts portfolio and to increase public access and participation in the arts.

Fundamental to the achievement of these is a commitment of employees to embrace these initiatives and to take a proactive role in delivering these to a level of quality acceptable to customers and stakeholders. Quality will be monitored through regular customer/stakeholder surveys.

The three sections are—

Section 11—Strategic Direction

This section develops the strategic direction for the Department in respect to its internal and external objectives as outlined above. The request for the Department to take on a wider role in arts portfolio co-ordination represents an increase in work output which will be achieved by the existing employee complement.

Section 12—Workplace Change Initiatives

This section contains initiatives to improve the way in which work is performed in order to achieve the outputs and outcomes specified in Clause 13.—Strategic Issues to Improve Productivity. Elements such as the establishment of self-managed work teams, work teams establishing key performance indicators and measuring and monitoring them and implementation of continuous improvement strategies, including the concept of devolution of work as a business improvement strategy, will set the foundation for sustainable productivity improvements.

Employee participation is an integral part in achieving meaningful reform of the way in which work is performed.

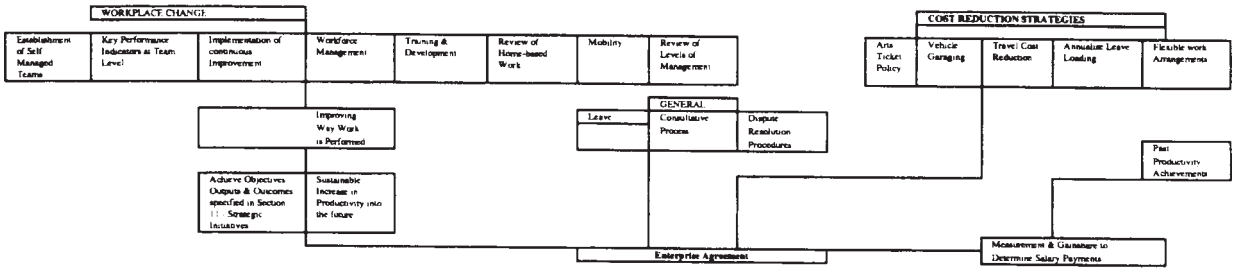
Section 13—Workplace Cost Reductions

These are areas which employees have indicated that cost reductions can be achieved through either benefit sacrifice or adopting improved administrative processes. Employee co-operation and involvement is fundamental to the successful achievement of these initiatives.

(3) The remainder of the agreement costs past productivity initiatives (Clause 16) which together with future productivity initiatives is used to calculate and determine the pay quantums (Clause 20), leave conditions (Clause 17), Consultative Processes (Clause 18) and Dispute Resolution Processes (Clause 19).

A schematic representation of the agreement appears below.

SCHEMATIC REPRESENTATION OF THE ARTS ENTERPRISE BARGAINING AGREEMENT



13.—STRATEGIC ISSUES TO IMPROVE PRODUCTIVITY

(1) The Public Sector Reform Committee of Cabinet commissioned a review of the Arts Portfolio, which was undertaken by Dr Wally Cox. The Cox Report, released in late 1995, recommends an expanded role for the Department for the Arts, both in its existing responsibilities as co-ordinator of the arts portfolio, and as the agency charged with implementing the structural and administrative reforms recommended in the Cox Report. Specifically the Department for the Arts will be required to facilitate a corporate planning and support service for the six agencies of the portfolio, on top of its existing functions.

Outcomes to be achieved from these strategies are—

- effective co-ordination of the activities in the arts portfolio.
- effective administration of the expanded role of the Department for the Arts.
- employees sharing and working towards a common vision and strategy, and outcomes to be achieved both at the department and portfolio level.
- the devolution of the provider functions currently performed by the Department to other appropriate Government agencies and/or arts agencies.
- employees working smarter and performing the expanded portfolio role without any increases in employee numbers.

(2) The Department will be required to perform its expanded role with the same number of staff. In addition staff will need to undertake professional development and technical training (eg to use new hardware and software to deliver the combined IT and HR services; to understand the principles of contemporary management and continuous improvement), but there can be no diminution of their duties while they are learning the skills and techniques necessary for the fulfilment of their expanded roles (see also subclause 14(7)).

The following initiatives will be addressed—

(1) REFORM AGENDA FOR THE ARTS PORTFOLIO

The parties agree on the importance of implementing Government reform across the Department and the arts portfolio, and specifically the recommendations of the arts portfolio Review as endorsed by the Minister.

To expedite implementation the parties agree on the following initiatives—

- implement the recommendations of the Cox Report including the development of a portfolio strategic plan.
- develop and implement a portfolio-wide corporate services bureau, IT plan, plan for cultural tourism and marketing plan, and re-engineer the communications system.

OBJECTIVE

To implement the Cox Review for the Public Sector Reform Committee of Cabinet to improve the effectiveness and efficiency of the administration of the portfolio and to increase public access and participation in the arts.

The following targets/milestones have been identified. In themselves they tend to represent outputs which will in turn define specific outcomes in relation to the objective of improving effectiveness and efficiency.

TARGET/MILESTONE—

BY 1 July 1996

- Facilitate the development of a portfolio strategic plan and launch publicly by March 1996.
- Devise and implement the 'modified status quo' structure for the portfolio, as recommended by the Cox Report, in line with portfolio strategic plan, by March 1996.
- Implement purchaser provider agreements with each of the portfolio agencies by 1 July 1996.
- Develop and install a new Ministerial correspondence tracking and communication system by the end of March 1996. Extend the system to link each agency to the Minister's office by June 1996.
- Re-engineer total communications system between portfolio agencies, and Minister's office by May 1996.
- Develop a 5-year integrated marketing initiative plan for portfolio by June 1996.
- Develop an integrated tourism strategy for portfolio by June 1996.
- Develop an asset management plan for the portfolio by June 1996.
- Have established a portfolio financial services bureau by March 1996.
- Co-ordinate the development of a Portfolio IT strategy by June 1996.

BY 1 January 1997

- Have run a number of portfolio cross promotions and have a co-ordinated plan in place for 1997 by December 1996.
- Review further opportunities to streamline processes such as government reporting requirements by December 1996.

Management and Staffing

In line with the Cox recommendations of an enhanced policy and planning role and major program management it is estimated that up to 2 additional FTEs would be required to implement the programme outlined under Reform Agenda for the arts portfolio.

Some of this is met through savings in other areas and some is met through the initiatives outlined in Clause 14.—Workplace Change Initiatives to Improve Productivity of this agreement.

Management and staff are committed also to developing skills and designing new systems to ensure the outcomes are met within the target dates established.

(2) FINALISED FRAMEWORK FOR THE REDEVELOPMENT OF THE PERTH CULTURAL CENTRE

The Perth Cultural Centre has been identified as one of the 13 precincts in the City for People strategy.

The parties agree to finalise the framework for redevelopment of the Perth Cultural Centre, and implement recommended strategies, including private sector involvement in commercial development.

To achieve this the parties agree to implement the following initiatives to expedite the process—

- complete the report
- establish a devolved management structure
- develop a financial plan and seek capital works funding.

OBJECTIVE

It is proposed to finalise the framework for the redevelopment of the Perth Cultural Centre in order to better link the precinct with the city and with Northbridge, to establish a single management entity and to increase patronage of the institutions within the precinct. The following targets and milestones represent strategies to achieve the objective.

TARGET/MILESTONE—

BY 1 July 1996

- Complete the report of the Cultural Centre Development Committee and present to the Minister.
- Develop a 2-year financial plan for the project by June 1996.
- Establish a management structure with Western Australia's Building Management Authority for the project by June 1996.

BY 1 January 1997

- Secure private sector involvement in at least two developments in the Cultural Centre by December 1996.

BY 31 December 1997

- $3 million of capital works approved and implemented within the term of this agreement.

Management and Staffing

The strategies identified to deliver the outcomes specified will require the development of new skills in contract management and planning.

(3) CONSOLIDATION OF ART AND URBAN RENEWAL STRATEGIES

The parties agree to further consolidate the art and urban renewal strategies to create new opportunities for artists, with particular emphasis on private sector initiatives and the establishment of formal links between the arts portfolio and the Capital City Committee.

OBJECTIVE

To consolidate the art and urban renewal strategies in order to create new opportunities for artists and promote the incorporation of art in urban renewal projects and infrastructure projects.

TARGET/MILESTONE—

BY 1 July 1996

Links established and operating effectively with Capital City Committee by February 1996.

BY 1 January 1997

- Examine feasibility, and devolve Public Art programme by December 1996.

BY 31 December 1997

- Facilitate ten presentations to private sector developers on public art by December 1997
- Commission and contract at least ten new artists' projects within the term of this agreement.

Management and Staffing

There has been an enormous growth in the demand for the Department's input on issues of art in public places' in recent years. Future demands and developments through the Perth for People strategy and other infrastructure projects will necessitate careful planning and the outsourcing of these services. Staff will need to develop higher order strategic planning, programme and contract management skills.

(4) NEW APPROACHES TO INVESTMENT IN MAJOR ARTS ORGANISATIONS

The parties agree to introduce new approaches to investment in the major arts organisations, including performance-based contractual arrangements, establishment of an arts investment trust and an arts marketing service and increased private sector involvement.

OBJECTIVE

To streamline administration of arts investment processes and reduce the dependence of arts agencies on government funding.

TARGET/MILESTONE—

BY 1 July 1996

- Introduce performance-based triennial funding and finalise agreements for at least 15 organisations by June 1996. Agreements to include targets over three years on:
- increase in income from non-State Government sources.
- increase in working capital levels.
- increase in net tangible assets.
- increase in audience attendance over the period of this agreement.
- Devolve funds to Country Arts WA from 1 January 1996 including touring, Arts Council and country community arts project funding.
- Refine panel process during 1996/1997 to reduce costs including amalgamating the Music, Dance, and Theatre panel into one Performing Arts panel.
- Launch an Arts Investment Trust by the end of March 1996.
- Investigate marketing strengths and weaknesses of arts agencies by June 1996.
- Revise the Arts Investment Handbook and application form in accordance with feedback from the Customer Service Council and recent reports, including the Publishing Review and Youth Arts Working Party, by March 1996.

BY 1 January 1997

- Evaluate the potential for larger agencies to take on support/mentoring roles for smaller agencies or organisations (eg Fremantle Arts Centre and Evos Music; West Australian Symphony Orchestra and West Australian Youth Orchestra) by December 1996.
- Define and announce a marketing support scheme, based upon outcomes of the abovementioned investigation, by September 1996.

BY 31 December 1997

- Secure an additional 30 nominations under the State Arts Sponsorship Scheme to encourage corporate sector sponsorship.
- Devolve Community Arts funding to Community Arts Network, and Research and Development funding to the Perth Institute of Contemporary Arts, following the model of Country Arts WA, by June 1997.
- Work towards the amalgamation of management functions of Government-funded arts agencies (eg Dance, Country Arts/CAN) by December 1997.

Management and Staffing

To achieve the outcome specified, staff will require a broader range of skills in planning, contract management and finance/accounting. Staff of the Arts Investment Division have commenced training in basic accounting including interpreting business plans, profit and loss statements and balance sheets.

(5) MULTIMEDIA STRATEGY

The parties agree to develop a multimedia strategy in order to create opportunities for the cultural sector.

OBJECTIVE

To better utilise new technology for dissemination of information about the Department; to create avenues by which artists may have access to new technology for the making of art; to forge strategic partnerships between the arts and multimedia industries to create new opportunities for Western Australia.

TARGET/MILESTONE—

BY July 1996

- Strategy to ensure that involvement in the establishment of the Co-operative Multimedia Centre (Imago) maximises opportunities for WA artists developed by March 1996.
- DFTA Home Page on the Internet established by June 1996.

BY July 1997

- A presence on the Internet established for at least 12 months and the Department successfully using the Internet for core business by June 1997.

BY December 1997

- Multimedia strategy fully implemented within the life of this agreement.
- Mooditj project completed and CD Roms delivered to all Australian schools and libraries as per the contract with consortium partners.

Management and Staffing

Multimedia is becoming integral to the arts. Whilst the Department currently enjoys 100% word processing literacy a range of other skills will need to be developed. The multimedia initiative represents a new and expanding role which will be undertaken with existing staff resources.

(6) ABORIGINAL CULTURAL INITIATIVES

The parties agree to implement Aboriginal Cultural Initiatives in conjunction with other Government authorities to ensure economic, cultural and social outcomes. Priority will be given to regional areas.

This will be achieved through improved co-ordination of funding between agencies (ATSIC, Aboriginal Affairs Department, Department for the Arts). In the first instance priority will be given to the Goldfields and Kimberley regions.

OBJECTIVE

To increase the number of investments in Aboriginal arts projects by 10 %.

TARGET/MILESTONE—

BY 1 July 1996

- An agreement with the Aboriginal Affairs Department on the guidelines for projects to be funded under the new 95/96 Aboriginal investment funds in place by June 1996
- Re-assess across the arts portfolio the support for Aboriginal cultural activities by June 1996.
- Complete a feasibility study on the co-location of Aboriginal arts organisations in Broome by June 1996.

BY 31 December 1997

- A 10 % increase in the number of investments in Aboriginal arts projects.

Management and Staffing

Aboriginal cultures are amongst the world's oldest living cultures. Strategies will need to be developed in partnership with other agencies to increase cross-cultural training and provide opportunities for Aboriginal artists and communities to preserve and record Aboriginal culture in Western Australia and to maintain and develop contemporary Aboriginal culture.

(7) ARTS AND EDUCATION REVITALISATION PLAN

The parties agree to implement a program to involve the cultural industry in a revitalisation of the Arts and Education Partnership Plan and the development of a broad youth arts strategy.

OBJECTIVE

To develop and implement a youth arts strategy with identifiable targets.

TARGET/MILESTONE—

BY 1 July 1996

- Develop a broad youth arts policy to guide Department strategy by June 1996.
- Identify funds available for youth arts by March 1996.
- Establish an out-sourced School Arts Visits Scheme by June 1996.

BY 31 December 1997

- Introduce a short-notice investment scheme for Youth Arts activities by December 1997.
- Identify a youth arts officer position (part FTE) by June 1997.

Management and Staffing

As part of the process of developing a youth policy, a commitment has been given to support implementation with 0.5. FTE from within existing resources. This will require further adjustment to other work areas.

(8) INTERNATIONAL CULTURAL OPPORTUNITIES

The parties agree to further extend international cultural opportunities, with emphasis on the cultural component of Sister State relationships and the development of export markets for Western Australian cultural goods and services, through the formulation of strategic partnerships and the utilisation of new marketing opportunities.

OBJECTIVE

To fulfil the requirements of the cultural components of WA's three Sister-State agreements, and to create export and exchange opportunities for the Western Australian cultural sector.

TARGET/MILESTONE—

BY 1 July 1996

- Re-negotiate Federal funding for the Cultural Industries Services Scheme by June 1996.
- Secure participation of at least one Western Australian project in the India Promotion by March 1996.
- Establish a portfolio-wide mechanism to co-ordinate all international activities in the Portfolio by June 1996.

BY 1 January 1997

- Introduce an artists' exchange program in the Hyogo Sister-State relationship by December 1996.

BY 31 December 1997

- Implement the cultural components of the East Java Sister-State relationship, as determined by the current five-year agreement between Western Australia and East Java.

Management and Staffing

The involvement of the Department in international cultural initiatives will become more focussed on particular sister-state agreements and specific Government priorities. This will require the re-design of various support mechanisms and services to achieve a highly developed strategic partnership approach.

(9) DEVELOPMENT OF REGIONAL CULTURAL PLANNING

The parties agree to facilitate the development of regional cultural planning, including the provision of services by the arts portfolio. This will be realised by—

- encouraging more contribution/activity/involvement by local Government.

- co-ordinating the delivery of services from the arts portfolio.
- devolution of non-core functions/roles.

OBJECTIVE

To establish a clear and rational process for regional cultural planning involving at least 12 local government authorities.

TARGET/MILESTONE—

BY 1 January 1997

- Facilitate the development of at least six regional cultural plans to guide infrastructure development and service provision in the regions by December 1996.

BY 31 December 1997

- Implement a Regional Cultural Planning policy to facilitate an increase in the number of local and regional government bodies which have cultural development plans, which support the appointing of cultural/arts officers and the development of capital works of benefit to the arts and increased planning and co-ordination across local government authorities.

Management and Staffing

The Department and portfolio agencies (with the exception of LISWA) do not have a well developed mechanism to provide services to country Western Australia. A new partnership policy with local government has been developed and will require greater co-ordination to implement.

(10) PERFORMANCE MANAGEMENT SYSTEM OBJECTIVE

To inculcate within the staff a clear commitment to achieving the above strategies and the implementation targets for the strategies.

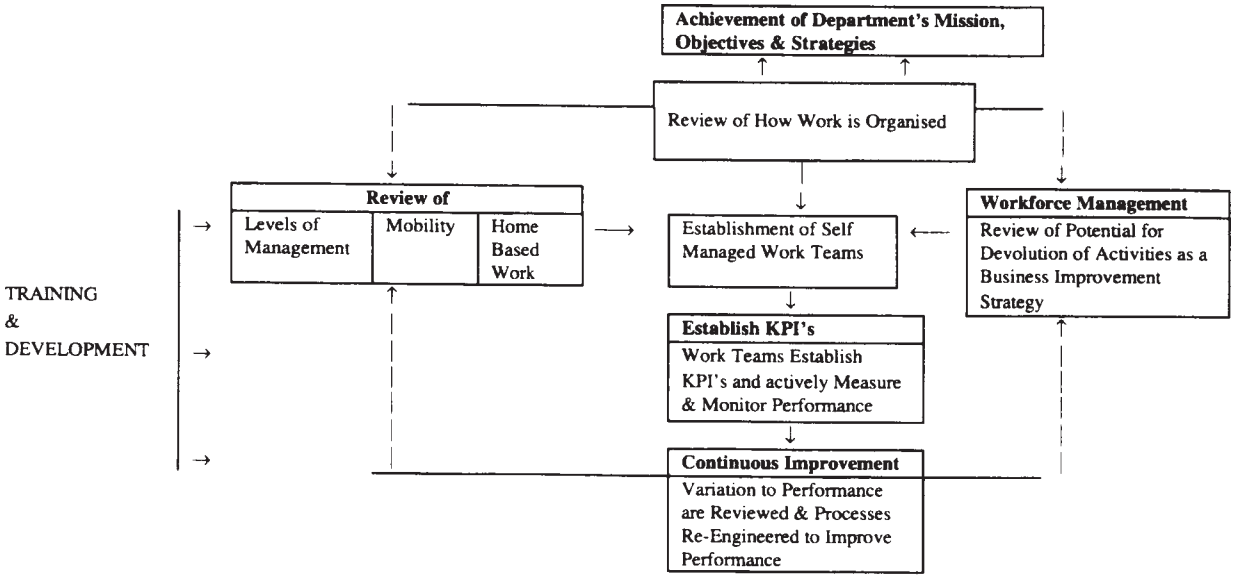
This will now be achieved by integrating the strategies into the PMS. The PMS will be reviewed to ensure it conforms to the new Public Sector Human Resource standards and captures the strategies, targets and milestones in this agreement.

14.—WORKPLACE INITIATIVES TO IMPROVE PRODUCTIVITY

(1) OVERVIEW OF WORKPLACE CHANGE CONCEPT

Making the workplace more effective and efficient is central to achieving the Department's mission, objectives, strategies and the external objectives/outcomes of Arts Portfolio Co-ordination. Employee commitment and participation in these processes is an integral to workplace change.

The model below depicts how the following initiatives will interact to improve the way work is performed.



(2) WORKPLACE CHANGE

Any move to alter the way work is arranged must support the organisation's mission and objectives, and be consistent with organisational objectives. The focus must be on satisfying our customers' requirements and delivering a service in the most effective and efficient way. Workplace-specific arrangements need to be developed to match the function of the particular workplace and access by customers.

The parties acknowledge that these initiatives will result in progress towards changes in the way the workforce is organised—for example job design, multiskilling, etc.

During the life of this agreement the parties agree to review the way work is delivered, prepare strategic and business plans, consolidate the customer charter and introduce modification to office management processes and practices.

It is agreed that any changes to work arrangements and practice will continue to be developed through full employee participation.

TARGET/MILESTONE—

By 1 July 1996

- Produce a three-year strategic plan for the Department by June 1996.
- Establish an orderly planning cycle for the Department by March 1996.
- Establish an effective medium (possibly staff newsletter, or weekly staff meeting) to enhance communication for staff by March 1996.

BY 1 January 1997

- Introduce a monitoring process to manage the responses to the reporting requirements of Government by December 1996.
- Further implement and consolidate the Customer Service Charter on a continuous basis.
- Introduce modifications to office management in accordance with feedback from customer and staff surveys.
- Ensure all staff are aware of the principles and practices of customer service.

(3) ESTABLISHMENT OF EMPOWERED SELF-MANAGED WORK TEAMS

The Department is currently divided into three Divisions, Arts Investment, Industry and Portfolio Services and Corporate Services, each operating discrete programs. This vertical

structure occasionally leads to duplications and to lack of communication.

One of the integral components of the workplace change process will be the move towards implementation of work teams, many of which will probably cross the existing divisions.

Staff have been involved in the identification of potential teams, and the development of the mechanisms by which they will work. Some move towards the implementation of teams has been made during the drafting of this Enterprise Agreement.

The parties agree that there is a need to break down divisional barriers in the workplace and that this will be best achieved through the introductions of empowered self-managed work teams.

Establishment of empowered self-managed work teams is seen as central to improving the delivery of the strategies outlined in Clause 13.—Strategic Issues to Improve Productivity.

The parties acknowledge that such changes require ownership by all employees and that the achievement of empowered self-managed work teams will be achieved by involving all employees in the design, development and implementation.

Steps to achieve this will be—

- education of employees on the concept of empowered self-managed work teams.
- staff planning workshops to determine how best to implement work teams given the objectives and strategies to be achieved (taking into account factors outlined in subclause 14(2).
- determining team boundaries, outcomes and accountabilities.
- determining how the team will be constructed, the roles of team members and the training requirements for each team member to enable them to effectively perform their assigned tasks.

TARGET/MILESTONES—

By 1 July 1996

- Conduct awareness/education for employees on empowered self-managed work teams by the end of April 1996.
- Conduct planning workshops by the end of May 1996.
- Teams determined and boundaries, outcomes and accountabilities defined by the end of June 1996.

By 1 January 1997

- Employees assigned to teams and roles defined by the end of July 1996.
- Training requirements for team members determined and training commenced by the end of August 1996.

(4) WORKPLACE KEY PERFORMANCE INDICATORS

The parties have agreed to move towards the implementation of empowered self-managed work teams throughout the Department to fundamentally alter the way work is organised.

Part of the agreed direction will be the implementation of work team-based key performance indicators and the necessary training for its introduction in the workplace.

Each work team will be required to establish six key performance indicators relevant to its work, which will include at least two of the three corporate indicators in the following categories—

- customer satisfaction.
- employee satisfaction.
- controllable costs.

The teams will establish performance targets (improvements in the KPIs over a period of time) which are realistic and achievable, and will be responsible for measuring, monitoring and evaluating their KPIs, recognising that they are an instrument for measuring variation and hence important to indicate areas on which to focus continuous improvements processes.

TARGET/MILESTONES—

BY 1 January 1997

- Work teams trained on implementation of KPIs by the end of August 1996.
- KPIs established by work teams by the end of October 1996.

BY 31 December 1997

- Work teams actively monitoring and reporting their Key Performance Indicators throughout 1997 and the process reviewed by December 1997.

(5) CONTINUOUS IMPROVEMENT STRATEGY

It is agreed that there will be full support and involvement to the on-going process of continuous improvement and this is a necessary extension of the Establishment of Work teams (subclause 14(3) and measuring variation in performance (subclause 14(4)).

This strategy is targeted to support the Department for the Arts mission and objectives. A fundamental ingredient in the achievement of this strategy is the involvement of all Department for the Arts employees in its development and implementation. The consultative mechanisms and the education process will be critical to this process.

The process of continuous improvement will be progressively implemented within the Department. The parties agree to promote the involvement of all employees in continuously improving their workplaces and to work actively to remove barriers to its implementation.

In particular, the parties agree to focus on the following issues—

(a) Customer Focus—
- * Building customer requirements into the design of new products, services or processes.
- * Ensuring that all employees understand that organisational success comes from satisfying internal and external client requirements.

(b) Leadership and Behaviour
All employees—
- * having a shared vision of the future.
- * focusing on achieving the long-term aims of the organisation whilst continually satisfying short-term requirements.
- * demonstrating ethical and best behaviours by example.
- * "coaching" and not "judging" behaviour.
- * eliminating fear and developing trust amongst all employees.

(c) Involvement of People—
- * Systematically involving all employees through team work.
- * Ensuring communication is open, effective and two-way, with clear, concise guidance.
- * Empowering employees at all levels to be involved in making decisions in the workplace wherever possible.
- * Providing employees with necessary training to assist them to undertake continuous workplace improvement.
- * Understanding and acceptance by all employees that everyone is responsible for the quality of his/her work.

(d) Acting on Facts and Knowledge—
- * Making decisions on the basis of accurate information, data and knowledge.
- * Developing effective and efficient processes to solve problems and improve quality.
- * Ensuring that all employees understand their responsibilities, how to measure their effectiveness and how to target improvement.
- * Collecting data that is informative and relevant so that it can be interpreted correctly.

(e) Emphasis on Process and Systems—
- * Participating in cross functional improvement activities.

* Ensuring that the processes are documented, controlled and constantly improved.
* Involving external suppliers as partners in the quality improvement process.

(f) Emphasis on Continuous Learning—

* Treating mistakes and problems as opportunities to learn and improve.
* Standardising gains and communicating improvements to other areas that might also learn from them.

(g) Structure for Continuous Improvement—

* Developing a framework to enable employees to submit ideas, obtain decisions and receive feedback on their ideas.
* Developing appropriate organisational structures to support the process of continuous improvement.
* Recognising and rewarding employees' efforts and achievements through gainsharing (see Clause 20.—Salary Increases).

TARGET/MILESTONE—

BY 1 January 1997

- A strategy for continuous improvement developed by the end of August 1996.
- Employees trained in the application of continuous improvement principles by the end of October 1996.
- Work teams actively using continuous improvement techniques to improve work processes by the end of December 1996.

(6) WORKFORCE MANAGEMENT

The parties recognise that the Department provides quality services. The parties are committed to improve the Department's processes.

Every endeavour will be made to improve the Department's competitive position relative to industry best practice benchmarks through continuous improvement processes.

The Department, in consultation with employees and their union representative, will work towards determining the most effective and efficient means of using internal and external resources, with proper regard to the needs, security, training and development and long-term efficiency of employees within the Department.

The parties agree that arbitrary job reductions are not a sound basis upon which improvements to productivity are secured. The Department agrees that it will not make significant changes to the permanent workforce without consultation with the Union. The parties agree that the Peak Consultative Forum (See Clause 18.—Consultative Processes) will be the forum to discuss and consult on all matters affecting workforce management, including such matters as redeployment, retraining and redundancy.

TARGET/MILESTONE—

BY 1 JULY 1996

- Activities suitable for devolution/outsourcing identified by the end of June 1996.

BY 1 JANUARY 1997

- Business analysis undertaken of areas identified and strategy developed for each activity by the end of August 1996.

(7) LEVELS OF MANAGEMENT AND SUPERVISION

There is a need to reduce the number of levels of management and supervision and the parties agree to work together to achieve this, including the reorganisation of supervision and roles in some areas.

TARGET/MILESTONE—

BY 1 July 1996

- Levels of management and structure are addressed by the end of June 1996.

(8) MOBILITY

The Department is an organisation that is customer focused. In this, we need to tailor our services to the changing needs of the customers and the community.

There is an acceptance that there is a need for employees to move more quickly to areas of work in response to the changing work loads and skills requirements.

This includes mobility within and between branches and across functional boundaries.

Any movement will be done only after consultation with the employees involved and in direct response to addressing customer needs.

(9) HOME BASED WORK

The parties agree to examine the potential for the introduction of limited home-based work during the life of this agreement.

In examining this aspect the parties will consider—

- the minimum days per month required to attend the office.
- other occasions where it would be imperative to attend the office, eg for face-to-face contact.
- information technology requirements to support such initiative.
- general principles under which it would work.
- the possibility of pilot testing as part of the examination process.

TARGET/MILESTONES—

BY 31 December 1997

- A strategy/policy for home-based work fully developed by December 1997.

(10) TRAINING AND DEVELOPMENT

All employees will be provided with the relevant training and development to enable them to carry out their range of duties including the requirements of the Enterprise Bargaining Agreement, the establishment of empowered self-managed work teams, definition of KPIs and the implementation of continuous improvement. All training will be documented and recorded in the employee's record of service.

The parties agree that staff development must reflect both the needs of the Department and the employee, and must provide incentive for the acquisition of skills.

The parties acknowledge that they have a joint commitment to the development of a more highly skilled and flexible workforce; the need to provide employees with greater employment opportunities through appropriate training; the need to remove barriers that prevent employees from fully utilising their acquired skills and the need to ensure that all employees have equal access to training for their identified training needs.

TARGET/MILESTONE—

BY 1 July 1996

- Prepare and implement a plan for training by June 1996.

15.—WORKPLACE COST REDUCTION INITIATIVES

(1) ARTS TICKET POLICY

The Department for the Arts currently purchases tickets for employees to attend cultural performances, as staff are required to attend arts and cultural events as part of their duties. Some complimentary tickets are provided to the Department by arts organisations, but these are not sufficient for all required attendances.

Staff have agreed, as a cost-saving measure, to fund these attendances themselves.

Accordingly, the parties agree that the practise of the Department purchasing tickets to cultural events will be discontinued.

They also agree that **should any** complimentary tickets be made available to the Department these will be distributed equitably to employees, based principally on the needs of an employee in a particular position to be aware of the event for the effective performance of his/her duties.

TARGET/MILESTONES—

BY June 1996

- A cross-divisional work team to be formed and have developed a new policy on staff attendance at arts events.

(2) TRAVEL COST RATIONALISATION

The parties agree that every endeavour will be made to reduce the cost of travelling.

Staff have agreed to "work smarter" in order to rationalise the need to travel (alternatives already suggested by staff include teleconferencing, telephone conversations, multimedia communication and the Internet, attending local conferences with content similar to interstate or international ones, etc).

They will also undertake better advance planning of travel arrangements to take advantage of discounted advance ticket and accommodation packages.

TARGET/MILESTONES—

To achieve a 10 % reduction on the annual travel budget for each year of this agreement.

(3) VEHICLE GARAGING

At present two officers have take home garaging privileges which adds to the cost of running the Department in terms of the marginal cost of using the vehicles for commuting and fringe benefit tax.

In line with Government policy, whilst the cars are first and foremost pool cars for use for Departmental purposes, from the date of operation of this agreement it is agreed that those employees extended take home privileges will pay the marginal cost associated with home commuting. To compensate those employees for the additional cost, during the life of this agreement the parties agree to examine the possibility of extending private use privileges to these employees on the same basis as that applicable to Senior Executive Service members in the context of developments in government policy.

TARGET/MILESTONE—

BY 31 December 1997

- Private use policy is established by December 1997.

(4) ANNUALISED ANNUAL LEAVE LOADING

The parties agree that the annual leave loading will be annualised into the fortnightly pays of employees. This will not change the general principles applicable to annual leave loading, but instead of being paid it in a lump sum on the taking of annual leave it will be paid fortnightly as a salary component.

(5) FLEXIBLE WORK ARRANGEMENTS

With a relatively small number of employees the need exists for more flexible approaches to working hours. From time to time an employee will be required to continue to work and accumulate credits for flexi-leave. At present employees can accumulate 7½ hours of credits in one four-week period—any accumulation beyond this is forfeited. Employees are therefore penalised for putting work requirements before personal commitments. To overcome this and reward employees for flexibility, the number of hours that can be accumulated within a four-week period will be increased to 15 for the life of this agreement.

The rest of the flexi-leave policy will be retained in its entirety.

16.—PAST PRODUCTIVITY INITIATIVES

Over the past twelve months a number of initiatives have been implemented to improve the productivity of the Department. These are—

- amalgamation of two positions (Level 7 & Level 5) into one Level 6 position in the finance area.
- abolition of Divisional Secretary position (Corporate Services) Level 2.
- amalgamation of Regional Arts and Community Arts officers and programs.
- devolution of aspects of the regional program to Country Arts WA, combined with the amalgamation of Regional and Community Arts, creating greater efficiency and allowing officer to take on other tasks.
- introduction of triennial funding which will refine workloads and free officers for other tasks.
- amalgamation of the Theatre and Music & Dance officers and programs.
- use of short-term contract staff for peak load times.
- preparation of induction kits for short-term staff
- amalgamation of grants approval letters and contracts so there is now only one piece of correspondence.
- multiskilling of the grants staff to access the database.
- introduction of more generic JDFs for the Industry and Portfolio Services Division, increasing the flexibility of movement of project officers.
- introduction of Email, Winfax and Word 6 to refine processing of correspondence. Reception telephone messages are now serviced via Email.

17.—PARENTAL LEAVE

(1) Definition—

(a) "Employee" includes full time, part time, permanent and fixed-term contract employees.

(b) "Replacement Employees" is an employee specifically engaged to replace an employee proceeding on parental lleave.

(2) Eligibility for Parental Leave—

(a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

(d) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) Subject to subclause (b) of this clause, where both partners are employed by the Department the leave shall not be taken concurrently except under special circumstances and with the approval of the Employing Authority.

(3) Other Leave Entitlements—

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave (PTO) for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Employing Authority's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

(d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy, or is required to undergo a pregnancy-related medical procedure, the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation—

(a) The employee shall give not less than four weeks notice in writing to the agency of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

(b) An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to Safe Job—

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

(b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary by a registered medical practitioner. This leave shall be treated as parental leave for the purpose of this agreement.

(6) Replacement Employee—

(a) Prior to engaging a replacement employee the Department shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work—

(a) An employee shall confirm the intention to return to work by notice in writing to the Department not less than four weeks prior to the expiration of the period of parental leave.

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to subclause 17(2)(e) hereof, the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award.

(d) Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

(8) Effect of Leave on Employment Contract—

(a) Fixed Term Contract—

An employee employed for a fixed term contract shall have the same entitlement to parental leave; however the period of leave granted shall not extended beyond the term of that contract.

(b) Continuous Service—

Absence on parental 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 under the relevant award or this agreement.

(c) Termination of Employment—

An employee on parental leave may terminate employment at any time during the period of level by written notice in accordance with the relevant award.

18.—CONSULTATIVE PROCESSES

(1) The parties are committed to working together to improve the business performance and working environment of the Department for the Arts.

(2) Consultation in the context of this agreement is defined as information sharing and discussion on matters relevant to the decision-making processes of the Department, and shall be conducted in such a way as to enable the parties to contribute to the decision-making process.

(3) It is agreed that consultation with employees and the Union party to this agreement on proposed changes to work organisation shall occur prior to change being made or implemented.

(4) Where the Department proposes to make any changes likely to affect existing work practices, working conditions or employment prospects of employees, the Union and the staff affected shall be notified by the Department as early as possible.

(5) It is acknowledged by the parties to this agreement that decisions will continue to be made by the Department for the Arts, which is responsible and accountable to Government through statute, for the efficient and effective operation of its business.

(6) As part of this agreement, the Department agrees to establish processes which will facilitate employee involvement.

(7) The process will be at two levels—

- at the workplace level employees will be involved in contributing to improve the efficiency and effectiveness of their work teams within set policies and guidelines.
- at the strategic and corporate level, the parties agree to establish a Peak Consultative Forum to monitor, review and have input into the progress of the implementation of this Enterprise Agreement and to actively share information and consult on corporate strategic issues affecting the Department's business operations

(8) The parties to the Peak Consultative Forum will consist of senior management, a Union official and an employee representative from the CSA.

19.—DISPUTE RESOLUTION PROCEDURES

Any dispute, question or difficulty requiring resolution shall be dealt with in the following manner—

(1) The employee concerned will raise the matter with the appropriate supervisor or team leader and attempt to resolve the issue.

(2) If it is not resolved, the employee may raise the issue with the next more senior manager of the Department for resolution.

(3) If still unresolved, the matter may be referred to the appropriate Union, which will discuss the matter with the Department.

(4) Before the issue proceeds to the Western Australian Industrial Relations Commission, the Department will ensure that its Executive Director (or nominee) and the Union will ensure that its Branch Secretary (or nominee) have been involved in the process.

(5) If still not resolved, the matter will be referred to the Western Australian Industrial Relations Commission for reconciliation and/or arbitration in accordance with due process.

At levels (1) to (5) inclusive of the above, the employee may choose to have the Union representative or another employee in attendance.

While the above process is being pursued, work shall continue as normal.

The parties to this agreement may raise an issue to a higher level in the process at any time.

Levels (1) to (4) shall be completed within seven working days.

20.—SALARY INCREASE

(1) Salary increases will be paid to employees in the form of both a flat rate and percentage increase. These will be paid in the following—

	% increase		flat amount
at 1/1/96	2%	and	$ 1320
at 1/7/96	1%	and	$ 660
at 1/1/97	0.5%	and	$ 330
at 31/12/97	NIL	and	$ 474

(2) Payment of the last three payments will be subject to satisfactory achievement of the target/milestones outlined in this agreement. If there are any reasons why a target/milestone is not achieved, and, it is considered it is outside the

control of the employees, this will be referred to the Peak Consultative Forum for deliberation.

(3) Any additional savings identified during the term of this agreement will be declared and included in the negotiations for the next agreement between the parties.

(4) A schedule of salaries appears at Appendix 1.

21.—FEDERAL AND STATE WAGE PRINCIPLES

(1) It is a condition of this agreement that there shall be no further wage increases for its life.

(2) The parties to the agreement shall be bound by the terms of the agreement for its duration.

(3) The parties to the agreement shall oppose any applications by other parties to be joined to this Enterprise agreement.

(4) The terms of this agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(5) No provisions in this agreement shall operate to cause any employee a reduction in ordinary time earnings, or to cause a departure from the standards of the Australian Industrial Relations Commission and Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

APPENDIX 1

DEPARTMENT FOR THE ARTS
SCHEDULE OF SALARIES
EXCLUDING ANNUAL LEAVE LOADING

LEVEL 1	DESCR.	STEP	ANNUAL SALARY 31/12/95	F/NT SALARY 31/12/95	ANNUAL SALARY 01/01/96	F/NT SALARY 01/01/96	ANNUAL F/NT SALARY 01/07/96	F/NT SALARY 01/07/96	ANNUAL F/NT SALARY 01/01/97	F/NT SALARY 01/01/97	ANNUAL SALARY 31/12/97	F/NT SALARY 31/12/97	% INCREASE OVER 2 YEARS
			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Level 1	U/17YRS	1	10,873	416.86	12,410	475.80	13,195	505.86	13,591	521.04	14,065	539.22	29.35
	17 YRS	2	12,707	487.17	14,281	547.52	15,084	578.30	15,489	593.84	15,963	612.01	25.63
	18YRS	3	14,822	568.26	16,438	630.23	17,263	661.83	17,679	677.79	18,153	695.97	22.47
	19YRS	4	17,157	657.78	18,820	721.54	19,668	754.06	20,097	770.48	20,571	788.65	19.90
	20YRS	5	19,267	738.67	20,972	804.05	21,842	837.40	22,281	854.23	22,755	872.41	18.10
	1stYear	6	21,165	811.44	22,908	878.27	23,797	912.36	24,246	929.57	24,720	947.75	16.80
	2ndYear	7	21,817	836.43	23,573	903.77	24,469	938.11	24,921	955.45	25,395	973.63	16.40
	3rdYear	8	22,468	861.39	24,237	929.23	25,140	963.82	25,595	981.29	26,069	999.47	16.03
	4thYear	9	23,115	886.20	24,897	954.53	25,806	989.38	26,265	1006.98	26,739	1025.15	15.68
	5thYear	10	23,766	911.16	25,561	979.99	26,477	1015.09	26,939	1032.82	27,413	1050.99	15.35
	6thYear	11	24,417	936.12	26,225	1005.44	27,148	1040.80	27,613	1058.66	28,087	1076.83	15.03
	7thYear	12	25,166	964.83	26,989	1034.73	27,919	1070.39	28,389	1088.39	28,863	1106.56	14.69
	8thYear	13	25,684	984.69	27,518	1054.99	28,453	1090.84	28,925	1108.95	29,399	1127.12	14.46
	9thYear	14	26,450	1014.06	28,299	1084.95	29,242	1121.10	29,718	1139.36	30,192	1157.53	14.15
Level 2	1stYear	1	27,367	1049.21	29,234	1120.81	30,187	1157.32	30,668	1175.76	31,142	1193.93	13.79
	2ndYear	2	28,070	1076.17	29,951	1148.30	30,911	1185.08	31,395	1203.66	31,869	1221.83	13.54
	3rdYear	3	28,809	1104.50	30,705	1177.20	31,672	1214.27	32,161	1232.99	32,635	1251.17	13.28
	4thYear	4	29,590	1134.44	31,502	1207.74	32,477	1245.12	32,969	1264.00	33,443	1282.17	13.02
	5thYear	5	30,407	1165.76	32,335	1239.69	33,318	1277.39	33,815	1296.43	34,289	1314.60	12.77
Level 3	1stYear	1	31,530	1208.82	33,481	1283.60	34,475	1321.74	34,978	1341.00	35,452	1359.17	12.44
	2ndYear	2	32,405	1242.36	34,373	1317.82	35,377	1356.30	35,884	1375.73	36,358	1393.91	12.20
	3rdYear	3	33,307	1276.95	35,293	1353.09	36,306	1391.93	36,818	1411.54	37,292	1429.71	11.96
	4thYear	4	34,233	1312.45	36,238	1389.30	37,260	1428.50	37,776	1448.29	38,250	1466.47	11.74
Level 4	1stYear	1	35,503	1361.14	37,533	1438.97	38,568	1478.66	39,091	1498.71	39,565	1516.88	11.44
	2ndYear	2	36,498	1399.28	38,548	1477.88	39,593	1517.96	40,121	1538.20	40,595	1556.37	11.23
	3rdYear	3	37,522	1438.54	39,592	1517.92	40,648	1558.40	41,182	1578.85	41,656	1597.02	11.02
With Commuted Overtime													
	1stYear	1+20%	42,604	1633.37	45,040	1726.76	46,282	1774.39	46,909	1798.45	47,478	1820.25	11.44
	2ndYear	2+20%	43,798	1679.14	46,258	1773.45	47,512	1821.55	48,146	1845.84	48,714	1867.65	11.23
	3rdYear	3+20%	45,026	1726.25	47,511	1821.51	48,778	1870.08	49,418	1894.62	49,987	1916.42	11.02
Level 5	1stYear	1	39,494	1514.15	41,604	1595.04	42,680	1636.29	43,223	1657.12	43,697	1675.30	10.64
	2ndYear	2	40,827	1565.25	42,964	1647.16	44,053	1688.94	44,603	1710.04	45,077	1728.21	10.41
	3rdYear	3	42,212	1618.35	44,376	1701.33	45,480	1743.64	46,037	1765.01	46,511	1783.18	10.19
	4thYear	4	43,649	1673.44	45,842	1757.52	46,960	1800.40	47,525	1822.05	47,999	1840.23	9.97
Level 6	1stYear	1	45,960	1762.04	48,199	1847.89	49,341	1891.68	49,918	1913.79	50,392	1931.96	9.64
	2ndYear	2	47,531	1822.27	49,802	1909.33	50,960	1953.72	51,544	1976.14	52,018	1994.32	9.44
	3rdYear	3	49,157	1884.61	51,460	1972.91	52,635	2017.95	53,228	2040.69	53,702	2058.86	9.25
	4thYear	4	50,893	1951.17	53,231	2040.80	54,423	2086.51	55,025	2109.60	55,499	2127.77	9.05
Level 7	1stYear	1	53,555	2053.23	55,946	2144.90	57,166	2191.65	57,781	2215.26	58,255	2233.43	8.78
	2ndYear	2	55,397	2123.85	57,825	2216.93	59,063	2264.40	59,689	2288.38	60,163	2306.55	8.60
	3rdYear	3	57,401	2200.68	59,869	2295.30	61,128	2343.55	61,763	2367.92	62,237	2386.10	8.43
Level 8	1stYear	1	60,658	2325.55	63,191	2422.66	64,483	2472.19	65,135	2497.21	65,609	2515.38	8.16
	2ndYear	2	62,991	2414.99	65,571	2513.90	66,887	2564.34	67,551	2589.81	68,025	2607.99	7.99
	3rdYear	3	65,884	2525.90	68,522	2627.03	69,867	2678.60	70,546	2704.65	71,020	2722.82	7.80
Level 9	1stYear	1	69,497	2664.42	72,207	2768.32	73,589	2821.30	74,287	2848.06	74,761	2866.24	7.57
	2ndYear	2	71,938	2758.01	74,697	2863.77	76,104	2917.72	76,814	2944.96	77,288	2963.13	7.44
	3rdYear	3	74,722	2864.74	77,536	2972.64	78,972	3027.67	79,697	3055.46	80,171	3073.64	7.29

SIGNATURE OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the Department for the Arts by .....M. Seares..... in the presence of .....Linda D'Cruz.....

Date: Date:

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated by .....D. Robinson..... in the presence of ..... R. O'Byrne.....

Date: 29.3.96 Date: 29.3.96

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department of the Arts.

No. PSA AG 6 of 1996.

Department of the Arts (Enterprise Bargaining) Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER A.R. BEECH.

24 May 1996.

Correcting Order.

PURSUANT to the powers conferred on me under the Industrial Relations Act 1979, I the undersigned Commissioner of the Western Australian Industrial Relations Commission, hereby order—

THAT the schedule to the order issued by the Commission in application No. PSA AG 6 of 1996 on the 15th day of May 1996 shall be corrected by deleting Appendix 1 and substituting therefor the Appendix 1 attached hereto.

[L.S] (Sgd.) A.R. BEECH,
Public Service Arbitrator.

Schedule.

APPENDIX 1

DEPARTMENT FOR THE ARTS
SCHEDULE OF SALARIES EXCLUDING ANNUAL LEAVE LOADING

LEVEL 1	DESCR.	STEP	ANNUAL SALARY 31/12/95	F/NT 31/12/95	ANNUAL SALARY 31/12/95	F/NT 31/12/95	ANNUAL F/NT SALARY 31/12/95	31/12/95	ANNUAL F/NT SALARY 31/12/95	31/12/95	ANNUAL SALARY 31/12/95	F/NT 31/12/95	% INCREASE OVER 2 YEARS
			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
LEVEL1	U/17YRS	1	10,873	416.86	12,410	475.80	13,195	505.86	13,591	521.04	14,065	539.22	29.35
	17 YRS	2	12,707	487.17	14,281	547.52	15,084	578.30	15,489	593.84	15,963	612.01	25.63
	18YRS	3	14,822	568.26	16,438	630.23	17,263	661.83	17,679	677.79	18,153	695.97	22.47
	19YRS	4	17,157	657.78	18,820	721.54	19,668	754.06	20,097	770.48	20,571	788.65	19.90
	20YRS	5	19,267	738.67	20,972	804.05	21,842	837.40	22,281	854.23	22,755	872.41	18.10
	1stYear	6	21,165	811.44	22,908	878.27	23,797	912.36	24,246	929.57	24,720	947.75	16.80
	2ndYear	7	21,817	836.43	23,573	903.77	24,469	938.11	24,921	955.45	25,395	973.63	16.40
	3rdYear	8	22,468	861.39	24,237	929.23	25,140	963.82	25,595	981.29	26,069	999.47	16.03
	4thYear	9	23,115	886.20	24,897	954.53	25,806	989.38	26,265	1006.98	26,739	1025.15	15.68
	5thYear	10	23,766	911.16	25,561	979.99	26,477	1015.09	26,939	1032.82	27,413	1050.99	15.35
	6thYear	11	24,417	936.12	26,225	1005.44	27,148	1040.80	27,613	1058.66	28,087	1076.83	15.03
	7thYear	12	25,166	964.83	26,989	1034.73	27,919	1070.39	28,389	1088.39	28,863	1106.56	14.69
	8thYear	13	25,684	984.69	27,518	1054.99	28,453	1090.84	28,925	1108.95	29,399	1127.12	14.46
	9thYear	14	26,450	1014.06	28,299	1084.95	29,242	1121.10	29,718	1139.36	30,192	1157.53	14.15
Level 2	1stYear	1	27,367	1049.21	29,234	1120.81	30,187	1157.32	30,668	1175.76	31,142	1193.93	13.79
	2ndYear	2	28,070	1076.17	29,951	1148.30	30,911	1185.08	31,395	1203.66	31,869	1221.83	13.54
	3rdYear	3	28,809	1104.50	30,705	1177.20	31,672	1214.27	32,161	1232.99	32,635	1251.17	13.28
	4thYear	4	29,590	1134.44	31,502	1207.74	32,477	1245.12	32,969	1264.00	33,443	1282.17	13.02
	5thYear	5	30,407	1165.76	32,335	1239.69	33,318	1277.39	33,815	1296.43	34,289	1314.60	12.77
Level 3	1stYear	1	31,530	1208.82	33,481	1283.60	34,475	1321.74	34,978	1341.00	35,452	1359.17	12.44
	2ndYear	2	32,405	1242.36	34,373	1317.82	35,377	1356.30	35,884	1375.73	36,358	1393.91	12.20
	3rdYear	3	33,307	1276.95	35,293	1353.09	36,306	1391.93	36,818	1411.54	37,292	1429.71	11.96
	4thYear	4	34,233	1312.45	36,238	1389.30	37,260	1428.50	37,776	1448.29	38,250	1466.47	11.74
Level 4	1stYear	1	35,503	1361.14	37,533	1438.97	38,568	1478.66	39,091	1498.71	39,565	1516.88	11.44
	2ndYear	2	36,498	1399.28	38,548	1477.88	39,593	1517.96	40,121	1538.20	40,595	1556.37	11.23
	3rdYear	3	37,522	1438.54	39,592	1517.92	40,648	1558.40	41,182	1578.85	41,656	1597.02	11.02
	With Commuted Overtime												
	1stYear	1+20%	42,604	1633.37	45,040	1726.76	46,282	1774.39	46,909	1798.45	47,478	1820.25	11.44
	2ndYear	2+20%	43,798	1679.14	46,258	1773.45	47,512	1821.55	48,146	1845.84	48,714	1867.65	11.23
	3rdYear	3+20%	45,026	1726.25	47,511	1821.51	48,778	1870.08	49,418	1894.62	49,987	1916.42	11.02
Level 5	1stYear	1	39,494	1514.15	41,604	1595.04	42,680	1636.29	43,223	1657.12	43,697	1675.30	10.64
	2ndYear	2	40,827	1565.25	42,964	1647.16	44,053	1688.94	44,603	1710.04	45,077	1728.21	10.41
	3rdYear	3	42,212	1618.35	44,376	1701.33	45,480	1743.64	46,037	1765.01	46,511	1783.18	10.19
	4thYear	4	43,649	1673.44	45,842	1757.52	46,960	1800.40	47,525	1822.05	47,999	1840.23	9.97
Level 6	1stYear	1	45,960	1762.04	48,199	1847.89	49,341	1891.68	49,918	1913.79	50,392	1931.96	9.64
	2ndYear	2	47,531	1822.27	49,802	1909.33	50,960	1953.72	51,544	1976.14	52,018	1994.32	9.44
	3rdYear	3	49,157	1884.61	51,460	1972.91	52,635	2017.95	53,228	2040.69	53,702	2058.86	9.25
	4thYear	4	50,893	1951.17	53,231	2040.80	54,423	2086.51	55,025	2109.60	55,499	2127.77	9.05
Level 7	1stYear	1	53,555	2053.23	55,946	2144.90	57,166	2191.65	57,781	2215.26	58,255	2233.43	8.78
	2ndYear	2	55,397	2123.85	57,825	2216.93	59,063	2264.40	59,689	2288.38	60,163	2306.55	8.60
	3rdYear	3	57,401	2200.68	59,869	2295.30	61,128	2343.55	61,763	2367.92	62,237	2386.10	8.43
Level 8	1stYear	1	60,658	2325.55	63,191	2422.66	64,483	2472.19	65,135	2497.21	65,609	2515.38	8.16
	2ndYear	2	62,991	2414.99	65,571	2513.90	66,887	2564.34	67,551	2589.81	68,025	2607.99	7.99
	3rdYear	3	65,884	2525.90	68,522	2627.03	69,867	2678.60	70,546	2704.65	71,020	2722.82	7.80
Level 9	1stYear	1	69,497	2664.42	72,207	2768.32	73,589	2821.30	74,287	2848.06	74,761	2866.24	7.57
	2ndYear	2	71,938	2758.01	74,697	2863.77	76,104	2917.72	76,814	2944.96	77,288	2963.13	7.44
	3rdYear	3	74,722	2864.74	77,536	2972.64	78,972	3027.67	79,697	3055.46	80,171	3073.64	7.29

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT—AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION ENTERPRISE AGREEMENT 1996
No. AG 102 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Conservation and Land Management
and
The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. AG 102 of 1996.

Department of Conservation and Land Management—Australian Liquor, Hospitality and Miscellaneous Workers Union Enterprise Agreement 1996.

COMMISSIONER A.R. BEECH.

11 June 1996.

Order.

HAVING heard Mr P. Heslewood on behalf of the Applicant and Mr R. Neil and Mr D. Kelly 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 Department of Conservation and Land Management—Australian Liquor, Hospitality and Miscellaneous Workers Union Enterprise Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule with effect on and from the 8th day of May 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Department of Conservation and Land Management—Australian Liquor, Hospitality and Miscellaneous Workers Union Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Date and Period of Operation
4. Definitions
5. Parties Bound
6. Relationship to Parent Awards
7. Wages
8. Payment of Wages
9. Fire Duties
10. Travelling Expenses
11. Leave Loading
12. Public Holidays
13. Application of the AWU Career Development Model
14. Productivity Outcomes
15. Dress Code
16. Dispute Settlement Procedure
17. Renewal of Agreement
18. Signatures

Schedule A—Wage Rates with Effect from 1 January 1996
Schedule B—Wage Rates with Effect from 1 April 1996
Schedule C—Wage Rates with Effect from 1 September 1996
Schedule D—Wage Rates with Effect from 1 January 1997
Schedule E—Travelling Expenses
Schedule F—Productivity Outcomes

3.—DATE AND PERIOD OF OPERATION

This agreement shall become operative from 1st April 1996. This agreement shall remain in force until 30 June 1997.

4.—DEFINITIONS

In this agreement the following expressions shall have the following meaning:

"Chief Executive Officer" means the person immediately responsible for the general management of the Department to the Minister of the Crown for the time being administering the department.

"Employee" means a public sector employee as defined by the Public Sector Management Act 1994.

"The union" means The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

"A day" means from midnight to midnight.

5.—PARTIES BOUND

This agreement shall apply to and be binding upon:

(1) The Department of Conservation and Land Management (CALM).

(2) The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (the union).

(3) Those employees of the Department of Conservation and Land Management who are subject to the following awards:

(a) Miscellaneous Government Conditions and Allowances Award No A 4 of 1992.

(b) Rangers (National Parks) Consolidated Award, 1987.

(c) Gardeners (Government) 1986 Award No. 16 of 1983

(d) The Ranger (Woodvale Research Centre) Order 1989

(e) Catering Employees and Tea Attendants (Government) Award 1982

(f) Cleaners and Caretakers (Government) Award, 1975.

(4) It is estimated that the number of employees who will be covered by this agreement is approximately 78.

6.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read and interpreted wholly in conjunction with the awards listed in subclause (3) of Clause 5.—Parties Bound.

Provided that where there is any inconsistency between this agreement and the awards this agreement shall prevail to the extent of that inconsistency.

7.—WAGES

(1) Productivity Based Wage Rises

(a) The parties intend to achieve the objectives outlined in subparagraphs (a)(i) to (a)(iii) of this subclause:

(i) The productivity initiatives provided for within Clause 14.—Productivity Outcomes shall be implemented from the date upon which this agreement becomes operative; and

(ii) The measurement of productivity savings that is provided for shall be undertaken at six monthly intervals during the life of this agreement; and

(iii) Where the measured productivity gains/savings are such that it can be clearly shown that there have been real savings made which are sufficient to fund the scheduled wage rise then the wage rises prescribed by subclauses (4) and (5) of this clause shall be implemented.

(b) Each employee covered by this agreement shall, according to his or her classification, be allocated by the Chief Executive Officer a wage level based on the approved classification system and as provided for hereunder.

(2) Wage Levels—1 January 1996 to 31 March 1996.

An increase of 2% on the rates prescribed in the Awards listed in subclause (3) of Clause 5.—Parties Bound, as at 1 January 1996, shall be paid retrospectively for the period 1 January to 31 March 1996.

(3) Wage Levels—1 April to 31 August 1996

A further increase of 2% shall be payable from the fist pay period on or after 1 April 1996.

(4) Wage Levels—1 July 1996 to 31 December 1996

A further increase of 2% shall be payable from the first pay period on or after 1 September 1996. Where productivity outcomes are identified which exceed the expected or forecast productivity savings flowing from the commitment of the parties to the provisions of Clause 14.—Productivity Outcomes, the excess amount will be recognised and made available for the wage increase specified at subclause (5) of this clause.

(5) Wage Levels—1 January 1997 to 30 June 1997

An increase of 1%, payable from the first pay period on or after 1 January 1997 subject to the achievement of the goal set out in Clause 15.—Dress Code, by 1 January 1997. Where productivity outcomes flowing from the commitment of the parties to the provisions of Clause 14.—Productivity Outcomes are identified, which exceed the expected or forecast productivity savings and result in a surplus over the costs of the increases provided for at subclauses (2), (3) and (4) of this clause, the parties agree that the surplus shall be taken into account in determining wage increases which may be provided for in any subsequent agreement.

8.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly but, where the usual pay day falls on a public service holiday, payment shall be made on the previous working day.

(2) A fortnight's wage shall be computed by dividing the annual wage by 313 and multiplying the result by 12.

(3) Wages shall be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union approved by the Treasurer or an accountable employee.

Provided that, where such form of payment is impracticable or where some exceptional circumstances exist, and, subject to prior written agreement between the employee and the Chief Executive Officer, payment by cheque may be made.

9.—FIRE DUTIES

For the purposes of this clause the expression "Fire Control" shall be deemed to include fire detection, suppression, prescribed burning, mopping up operation and patrols.

Where an employee performs fire control work there shall be a period of eight hours completely free of all duties between successive shifts of fire control work and ten hours completely free of all duties at the cessation of multiple shift fire control work, without loss of salary for ordinary working time.

Provided that, where an employee is required to return to or continue work without such a break, the employee shall be paid at double the ordinary rate until such break occurs.

10.—TRAVELLING EXPENSES

(1) Overnight Travel

When an employee travels on official business which necessitates an overnight stay, then either:

(a) accommodation and meals will be provided by the employer at no charge to the employee; or

(b) the employee shall be reimbursed for all expenses necessarily incurred as a result of such travel.

Provided that reimbursement will only be made upon production of receipts or such other evidence as is deemed acceptable to the employer.

(2) Non Overnight Travel

When an employee travels on official business and such travel does not involve an overnight stay, meals will only be provided free of charge where an employee is required to purchase a meal during the course of such travel and that meal is not the first meal consumed during that work period.

(3) In addition to the rates contained in Schedule E—Travelling Expenses, an employee shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

(4) The following arrangements will apply for the payment of travelling expenses:

(a) Accounts for accommodation and meals will be paid by Corporate Card; or

(b) Where an employee is required to purchase accommodation, meals or incidentals then the employee shall be reimbursed by presenting the receipts or evidence of the purchase to the appropriate cost centre manager.

(c) Expenses are not to exceed the rates prescribed in Schedule E—Travelling Expenses.

11.—LEAVE LOADING

The leave loading prescribed in the award, which is payable to employees who are subject to this agreement, shall be divided into twenty six equal instalments and paid to the employees in twenty six equal amounts throughout the year as a part of the normal wage.

12.—PUBLIC HOLIDAYS

(1) National Park Rangers

National Park Rangers who are required to work on a public holidays shall not be entitled to any additional remuneration for having worked such a day.

Provided that the provisions of Clause 12A.—Public Holiday Leave of the Rangers (National Parks) Consolidated Award 1987 shall continue to apply to Park Rangers during the term of this agreement.

(2) Other Employees

The provisions of each particular award listed in subclause (3) of Clause 5.—Parties Bound shall continue to apply to employees who are not designated as National Park Rangers.

13.—APPLICATION OF THE AWU CAREER DEVELOPMENT MODEL

Departmental employees who are subject to the Australian Workers Union (Western Australian Public Sector) Award 1992 and who carry out the functions of a position which is classified at a level higher than the tradesperson equivalent, may work in national parks under the supervision of a National Park Ranger in Charge or Senior Ranger.

Provided that no individual employee shall be employed within a national park(s) for an amount of time which exceeds 30% of their toal work time when averaged over a twelve month period.

Such an employee shall not be employed within a national park unless they possess or are currently undertaking study toward the achievement of a Certificate in National Park Management or an approved equivalent.

14.—PRODUCTIVITY OUTCOMES

(1) The parties to this agreement will participate in and support the following initiatives:

AWU employee's career development
Volunteer projects
Contractors
Continuous improvement
Business units
Flexibility
Health and fitness
Management of work, technology and resource utilisation
Training and skills acquisition.

(2) Wage increases, as provided for by Clause 7.—Wages may be paid subject to the achievement of the productivity outcomes detailed in Schedule F—Productivity Outcomes.

(3) As part of this agreement the parties agree to establish and reinforce processes which will facilitate employee involvement to initiate the processes and measure the outcomes.

(a) Individual employees in the workplace and work teams involved in identifying, implementing and quantifying productivity improvements.

(b) Workplace Consultative Committees implementing and quantifying productivity improvements.

(c) The single bargaining unit (SBU) will monitor and review the implementation of the initiatives and progress toward the achievement of those outcomes prescribed within Schedule F—Productivity Outcomes. Subject to the provisions of subparagraph (c)(iii) of this subclause the single bargaining unit will convene at intervals of no more than six months.

The SBU will carry out its role as prescribed herein through using the following mechanisms:

(i) A subcommittee shall be appointed by the SBU to liaise with the various workplace consultative committees which are operative within CALM.

(ii) This subcommittee is responsible for ensuring that regular measurements of productivity initiatives are taken and recorded and that these results are forwarded (via the subcommittee) to the SBU for consideration.

(iii) Where the subcommittee so requests then the SBU shall convene on an as required basis.

(iv) Consultative Committee reports shall be forwarded to the subcommittee on a regular basis, but at intervals not exceeding two months, for review.

15.—DRESS CODE

The parties agree to develop and agree upon a dress code for CALM by 1 January 1997. The agreement shall incorporate a resolution of existing inequities in the provision of uniforms and work clothing and shall provide a comprehensive code for dress sufficient to encompass all employees.

16.—DISPUTE SETTLEMENT PROCEDURE

In connection with questions, disputes or difficulties arising under this agreement the parties shall, in seeking to resolve the matter, follow the following procedure:

(1) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

(2) The parties shall take an early and active part in discussion and negotiations aimed at preventing or settling disputes in accordance with the agreed procedure set out hereunder.

(3) Procedure for Settlement of Disputes

(a) The employee and the employee's supervisor should confer, clearly identify the facts and, where possible, resolve the issue.

(b) If the issue remains unresolved then the employee, the union representative, the supervisor and the department manager shall confer and, where possible, resolve the issue.

(c) If the issue remains unresolved then the union shall confer with the personnel and industrial relations manager on the matter and, where possible, resolve the issue.

(d) If the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

(4) In the case of a matter which involves an employee who is subject to the Rangers (National Parks) Consolidated Award, 1987 the following conditions shall also apply:

(a) Until the matter is resolved in accordance with the above procedure, the status quo shall remain.

(b) While the above procedure is being followed no party shall be prejudiced as to the final settlement by the continuation of work in accordance with current procedure.

17.—RENEWAL OF AGREEMENT

No later than six weeks before the expiry of this agreement the parties shall meet to discuss the arrangements to apply after the agreement expires.

The parties agree that, where agreement is not reached to renew to replace this agreement within four months of the date of expiry of this agreement, the agreement may be cancelled upon written application to do so being made by either of the parties. In the event that this agreement is cancelled then the parties shall revert to the terms and conditions prescribed within the relevant awards as listed in subclause (3) of Clause 5.—Parties Bound.

18.—SIGNATURES

S. Shea
Chief Executive Officer
Department of Conservation and Land Management
Date 4 April 1996

Helen M. Creed
Secretary
The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
Date 10 April 1996

SCHEDULE A—WAGE RATES WITH EFFECT FROM 1 JANUARY 1996

	Annual Wage $	Fortnightly Wage $
Trainee Ranger		
1st Year	23,664	907.24
2nd Year	23,346	895.05
Ranger Grade 1		
1st Year	25,032	959.71
2nd Year	25,714	985.83
3rd Year	26,505	1,016.17
4th Year	27,049	1,037.02
5th Year	27,857	1,067.99
Ranger Grade 2		
1st Year	28,824	1,105.06
2nd Year	29,565	1,133.50
3rd Year	30,351	1,163.62
4th Year	31,164	1,194.80
5th Year	32,032	1,228.08
Senior Ranger		
1st Year	33,214	1,273.37
2nd Year	34,131	1,308.54
3rd Year	35,115	1,346.25
4th Year	36,060	1,382.48
RANGERS IN RECEIPT OF THE NO FIXED HOURS ALLOWANCE		
Ranger Grade 1		
1st Year	31,290	1,199.64
2nd Year	32,142	1,232.29
3rd Year	33,131	1,270.21
4th Year	33,811	1,296.27
5th Year	34,821	1,334.98
Ranger Grade 2		
1st Year	36,029	1,381.32
2nd Year	36,957	1,416.87
3rd Year	37,939	1,454.52
4th Year	38,955	1,494.49
5th Year	40,040	1,535.09
Senior Ranger		
1st Year	41,517	1,591.71
2nd Year	42,664	1,635.68
3rd Year	43,893	1,682.81
4th Year	45,075	1,728.10

SCHEDULE B—WAGE RATES WITH EFFECT FROM 1 APRIL 1996

	Annual Wage $	Fortnightly Wage $
Trainee Ranger		
1st Year	24,137	925.39
2nd Year	23,812	912.95
Ranger Grade 1		
1st Year	25,533	978.91
2nd Year	26,228	1,005.55
3rd Year	27,035	1,036.49
4th Year	27,590	1,057.76
5th Year	28,414	1,089.34
Ranger Grade 2		
1st Year	29,400	1,127.16
2nd Year	30,157	1,156.17
3rd Year	30,958	1,186.89
4th Year	31,788	1,218.69
5th Year	32,673	1,252.64
Senior Ranger		
1st Year	33,878	1,298.83
2nd Year	34,814	1,334.72
3rd Year	35,817	1,373.18
4th Year	36,781	1,410.13
RANGERS IN RECEIPT OF THE NO FIXED HOURS ALLOWANCE		
Ranger Grade 1		
1st Year	31,916	1,223.63
2nd Year	32,785	1,256.94
3rd Year	33,794	1,295.61
4th Year	34,487	1,322.20
5th Year	35,517	1,361.68
Ranger Grade 2		
1st Year	36,750	1,408.95
2nd Year	37,696	1,445.21
3rd Year	38,698	1,483.61
4th Year	39,734	1,523.36
5th Year	40,841	1,565.80
Senior Ranger		
1st Year	42,347	1,623.54
2nd Year	43,517	1,668.40
3rd Year	44,771	1,716.50
4th Year	45,976	1,762.66

SCHEDULE C—WAGE RATES WITH EFFECT FROM 1 SEPTEMBER 1996

	Annual Wage $	Fortnightly Wage $
Trainee Ranger		
1st Year	24,620	943.89
2nd Year	24,288	931.18
Ranger Grade 1		
1st Year	26,044	998.48
2nd Year	26,753	1,025.66
3rd Year	27,576	1,057.22
4th Year	28,142	1,078.92
5th Year	28,982	1,111.13
Ranger Grade 2		
1st Year	29,988	1,149.70
2nd Year	30,760	1,179.29
3rd Year	31,577	1,210.63
4th Year	32,423	1,243.06
5th Year	33,326	1,277.69
Senior Ranger		
1st Year	34,555	1,324.81
2nd Year	35,510	1,361.41
3rd Year	36,533	1,400.64
4th Year	37,517	1,438.33
RANGERS IN RECEIPT OF THE NO FIXED HOURS ALLOWANCE		
Ranger Grade 1		
1st Year	32,555	1,248.10
2nd Year	33,441	1,282.07
3rd Year	34,470	1,321.52
4th Year	35,177	1,348.64
5th Year	36,227	1,388.91
Ranger Grade 2		
1st Year	37,485	1,437.13
2nd Year	38,449	1,474.11
3rd Year	39,471	1,513.29
4th Year	40,529	1,553.83
5th Year	41,658	1,579.11
Senior Ranger		
1st Year	43,194	1,656.01
2nd Year	44,388	1,701.76
3rd Year	45,667	1,750.80
4th Year	46,896	1,797.92

SCHEDULE D—WAGE RATES WITH EFFECT FROM 1 JANUARY 1997

	Annual Wage $	Fortnightly Wage $
Trainee Ranger		
1st Year	24,866	953.34
2nd Year	24,530	940.45
Ranger Grade 1		
1st Year	26,304	1,008.47
2nd Year	27,020	1,035.92
3rd Year	27,852	1,067.79
4th Year	28,423	1,089.70
5th Year	29,272	1,122.24
Ranger Grade 2		
1st Year	30,288	1,161.20
2nd Year	31,067	1,191.08
3rd Year	31,893	1,222.74
4th Year	32,748	1,255.50
5th Year	33,660	1,290.47
Senior Ranger		
1st Year	34,901	1,338.06
2nd Year	35,865	1,375.02
3rd Year	36,899	1,414.65
4th Year	37,892	1,452.72
RANGERS IN RECEIPT OF THE NO FIXED HOURS ALLOWANCE		
Ranger Grade 1		
1st Year	32,880	1,260.59
2nd Year	33,775	1,294.90
3rd Year	34,814	1,334.74
4th Year	35,529	1,362.13
5th Year	36,590	1,402.80
Ranger Grade 2		
1st Year	37,860	1,451.50
2nd Year	38,834	1,488.85
3rd Year	39,866	1,528.42
4th Year	40,934	1,569.37
5th Year	42,074	1,613.08
Senior Ranger		
1st Year	43,626	1,672.57
2nd Year	44,831	1,718.78
3rd Year	46,123	1,768.31
4th Year	47,365	1,815.90

SCHEDULE E—TRAVELLING EXPENSES

	Column A $	Column B $	Column C $
Allowance to Meet Incidental Expenses			
(1) WA—South of 26° South Latitude	7.20		
(2) WA—North of 26° South Latitude	9.20		
(3) Interstate	9.20		

	Column A $	Column B $	Column C $
Accommodation Involving an Overnight Stay in a Hotel or Motel			
(4) WA—Metroplitan Hotel or Motel	144.85	72.45	48.25
(5) Locality South of 26° South Latitude	103.05	51.50	34.30
(6) Locality North of 26° South Latitude			
Broome	182.00	91.00	60.60
Carnarvon	119.90	59.95	39.95
Dampier	130.90	65.45	43.60
Derby	128.00	64.00	42.60
Exmouth	130.65	65.30	43.50
Fitzroy Crossing	151.40	75.70	50.40
Gascoyne Junction	88.15	44.05	29.35
Halls Creek	150.15	75.05	50.00
Karratha	186.10	93.05	62.00
Kununurra	153.60	76.80	51.15
Marble Bar	116.15	58.05	38.70
Newman	185.15	92.55	61.65
Nullagine	86.65	43.30	28.85
Onslow	147.15	73.55	49.00
Pannawonica	105.65	52.80	35.20
Paraburdoo	159.70	79.85	53.20
Port Hedland	149.50	74.75	49.80
Roebourne	103.20	51.60	34.40
Sandfire	75.15	37.55	25.00
Shark Bay	158.65	79.30	52.80
Tom Price	150.40	75.20	50.15
Turkey Creek	81.65	40.80	27.20
Wickham	129.15	64.55	43.00
Wyndham	118.15	59.05	39.35
(7) Interstate—Capital City			
Sydney	167.05	83.55	55.65
Melbourne	155.40	77.70	51.75
Other Capitals	147.80	73.90	49.20
(8) Interstate—Other than Capital City	103.05	51.50	34.30
Travel not Involving an Overnight Stay or Travel Involving an Overnight Stay Where Accommodation Expenses are not Incurred			
(9) WA—South of 26° South Latitude			
Breakfast	7.50		
Lunch	7.50		
Evening Meal	20.00		
(10) WA—North of 26° South Latitude			
Breakfast	10.00		
Lunch	15.00		
Evening Meal	20.00		
(11) Interstate			
Breakfast	10.00		
Lunch	15.00		
Evening Meal	20.00		

SCHEDULE F—PRODUCTIVITY OUTCOMES

Targets for productivity improvements were initiated and developed at the workplace level, at meetings of groups of CALM employees; called workgroups they represent a group of employees who share a common budget, supervisor, roles and responsibility. In some workplaces they met as members of formal JCCs, in others they met in informal groups.

They used the initiatives listed in Clause 14.—Productivity Outcomes as a guide for the development of productivity improvements. The productivity improvements they developed were unique for that particular group. In these workgroups some employees had management responsibilities over wages employees, officers and contractors. Consequently it can be said they were developed with the consent and support of local management.

Productivity improvements will be shared on the basis of one third for CALM, one third for the government and one third to be shared with staff as a salary increase subject to the following:

- Total productivity will be the sum of real and nominal savings.
- The one third share will not exceed 2% of payroll of those staff contributing to the productivity initiatives.
- The one third share was generally arrived at because it represented the real savings which could be used to fund the salary increase.
- All public service officers must be committed to the productivity initiatives through enterprise or workplace agreements.
- The formula for determining the percentage salary increase will be:

$$\text{Productivity achieved} \times \frac{1}{3} \times \frac{1}{\text{Payroll}} = \text{Pay increase (max 2\%)}$$

CALM has the willing compliance of its staff to participate in and be committed to the following outcomes in return for a share of the total productivity achieved during the period 1 January 1996—30 June 1996.

OUTCOME 1

22 FTEs WOULD BE REQUIRED TO ACHIEVE PRODUCTIVITY IMPROVEMENT IN ADMINISTRATIVE SERVICES, FIELD OPERATIONS AND PLANNING IF THE INITIATIVES ARE NOT IMPLEMENTED.

CALM is planning to utilise the time saved by staff as a result of the implementation of the following productivity improvements for the carrying out of other tasks; tasks which would require the additional input of 22 FTEs.

(1) Administrative Services. These include:
  (a) answering telephone calls—Albany, Bunbury
  (b) dealing with enquiries at front counters—Woodvale
  (c) stationery management procedures—Perth, Walpole
  (d) use of computers in writing and managing processes such as budgeting—Bunbury, CALMfire, Geraldton, Herbarium, Kalgoorlie, Manjimup, Merredin, Pemberton, Perth
  (e) improving administrative process—Finance, Geraldton, Herbarium, Manjimup, Manjimup SIS, Mundaring, Walpole, Woodvale

(2) Field Operations. These include:
  (a) improving fire management—CALMfire, Perth, Manjimup, Narrogin
  (b) developing better forest assessment techniques—FMB, Manjimup SID
  (c) managing remote areas—Kalgoorlie, Merredin
  (d) improving other management—Manjimup, Swan Marine, Mundaring, Narrogin, Pemberton, SW Capes, Walpole
  (e) use of more volunteers—Parks

(3) Planning. These include:
  (a) meeting increasing demands by improving the planning process—Bunbury, Parks
  (b) improving the planning process by designing improved data retrieval and management systems—FMB, LIB

OUTCOME 2

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE NON-SALARIED COST COMPONENT OF FIELD OPERATIONS

These improvements represent the additional savings made over and above those in Outcome 1 as a result of employees making savings in time when carrying out field operations. They include:

(1) improving fire management—CALMfire, Perth, Manjimup
(2) improving other management—Swan Marine, Mundaring, Narrogin, Pemberton, SW Capes, Walpole

OUTCOME 3

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE NON-SALARIED COST COMPONENT OF PLANNING

These improvements represent the additional savings made over and above those in Outcome 1 as a result of employees making savings in time when carrying out planning. These include:

(1) meeting increasing demands by improving the planning process—Parks
(2) improving the planning process by designing improved data retrieval and management systems—FMB

OUTCOME 4

REDUCTION IN OPERATING THE VEHICLE FLEET

Savings are made by making changes to the way the fleet is managed through reducing hire charges and running costs by:

(1) Operating existing vehicles more efficiently—Katanning, Kalgoorlie, Swan Marine, Merredin.

(2) Changing vehicles or modifying existing vehicles that better suit CALM's requirement—CALMfire, Mornington, Mundaring, SW Capes.

OUTCOME 5

REDUCTION IN OVERTIME

Savings are made through the completion of tasks by employees using flexible working hours. In some cases one of the benefits will be a reduction in the amount of overtime previously paid for these tasks—Albany, Katanning, Kalgoorlie, Pemberton.

OUTCOME 6

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE COST OF OPERATIONS WHICH EARN REVENUE.

The general thrust of these improvements is for employees to save time when carrying out operations in CALM which earn revenue. They include using a combination of flexible working hours, continuous improvement, new technology and changes in work practice to make these operations more competitive in:

(1) Nurseries eg, PCC and Narrogin.

(2) Hardwood and softwood silviculture and logging operations—Native Forest and Softwood Business Units, Mundaring, Narrogin.

OUTCOME 7

EXPANSION OF SERVICES PROVIDED TO EXTERNAL CUSTOMERS

Employees have been looking at ways in which they can help improve and expand upon the services they provides to their external customers. These services include the provision of recreation opportunities by employees based at Manjimup SID, Kalgoorlie, Pemberton and Walpole.

OUTCOME 8

INCREASE IN EXTERNAL FUNDING OVER AND ABOVE EXISTING LEVELS

Employees have been looking at ways in which they can help CALM improve its funding situation by obtaining funds from external sources, such as grants—Mundaring.

SUMMARY OF PRODUCTIVITY IMPROVEMENTS FOR THE PERIOD 1 JANUARY 1996—30 JUNE 1996

	Estimated Nom Savings $	Estimated Real Savings $
Outcome 1 2 FTEs would be required to achieve the productivity improvements in administrative services, planning, and field operations if the initiatives are not implemented.		
Total	649,350	9,840
Outcome 2 Improvement in productivity through reduction in time taken to complete work, leading to a reduction in the non-salaried cost component.		
Total	46,500	5,750
Outcome 3 Improvement in productivity through reduction in time taken to complete work, leading to a reduction in the non-salaried cost component of planning.		
Total	930,000	28,000
Outcome 4 Reduction in cost of operating vehicle fleet		
Total	60,850	19,000
Outcome 5 Reduction in overtime		
Total	14,450	4,000
Outcome 6 Improvement in productivity through reduction in time taken to complete work, leading to a reduction in cost of operations which earn revenue.		
Total	77,000	542,500
Outcome 7 Expansion of services provided to external customers		
Total	31,000	1,700
Outcome 8 Increase in external funding over and above existing levels		
Total	20,000	0
TOTAL FOR CALM	1,829,150	610,790

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT—AUSTRALIAN MANUFACTURING WORKERS UNION ENTERPRISE AGREEMENT 1996
No. AG 101 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Conservation and Land Management

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

No. AG 101 of 1996.

Department of Conservation and Land Management—Australian Manufacturing Workers Union Enterprise Agreement 1996.

COMMISSIONER A.R. BEECH.

11 June 1996.

Order.

HAVING heard Mr P. Heslewood on behalf of the Applicant and Mr G. Sturman 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 Department of Conservation and Land Management—Australian Manufacturing Workers Union Enterprise Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule with effect on and from the 8th day of May 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule

1.—TITLE

This agreement shall be known as the Department of Conservation and Land Management—Australian Manufacturing Workers Union Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Date and Period of Operation
4. Definitions
5. Parties Bound
6. Relationship to Parent Award
7. Wages
8. Payment of Wages
9. Leave Loading
10. Fire Duties

11. Minimum Call-out Payment
12. Productivity Outcomes
13. Dress Code
14. Dispute Resolution Procedure
15. Renewal of Agreement
16. Signatures
Schedule A—Wage Rates with Effect from 1st January 1996
Schedule B—Wage Rates with Effect from 1st April 1996
Schedule C—Wage Rates with Effect from 1st September 1996
Schedule D—Wage Rates with Effect from 1st January 1997
Schedule E—Productivity Outcomes

3.—DATE AND PERIOD OF OPERATION

This agreement shall become operative from 1st April 1996. This agreement shall remain in force until 30th June 1997.

4.—DEFINITIONS

In this agreement the following expressions shall have the following meaning:

"Chief Executive Officer" means the person immediately responsible for the general management of the Department to the Minister of the Crown for the time being administering the department.

"Employee" means a public sector employee as defined by the Public Sector Management Act 1994.

"The union" means the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

"A day" means from midnight to midnight.

"Fire Control" shall be deemed to include fire detection, suppression, prescribed burning, mopping up operation and patrols.

5.—PARTIES BOUND

This agreement shall apply to and be binding upon:

(1) The Department of Conservation and Land Management (CALM);

(2) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch (the union); and

(3) Those estimated ten employees of the Department of Conservation and Land Management who are subject to the Engineering Trades (Government) Award 1967 Nos. 29, 30 and 31 of 1961 and 3 of 1962 (the award).

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted wholly in conjunction with the award.

Provided that where there is any inconsistency between this agreement and the award this agreement shall prevail to the extent of that inconsistency.

7.—WAGES

(1) Productivity Based Wage Rises

(a) The parties intend to achieve the objectives outlined in subparagraphs (a)(i) to (a)(iii) of this subclause:

(i) The productivity initiatives provided for within Clause 12.—Productivity Outcomes shall be implemented from the date upon which this agreement becomes operative.

(ii) The measurement of productivity savings that is provided for shall be undertaken at six monthly intervals during the life of this agreement.

(iii) Where the measured productivity gains/savings are such that it can be clearly shown that there have been real savings made which are sufficient to fund the scheduled wage rise then the wage rises prescribed by subclauses (4) and (5) of this clause shall be implemented.

(b) Each employee covered by this agreement shall, according to his or her classification, be allocated by the Chief Executive Officer a wage level based on the approved classification system and as provided for hereunder.

(2) Wage Levels—1 January 1996 to 31 March 1996.

An increase of 2% on the rates prescribed in the Awards listed in subclause (3) of Clause 5.—Parties Bound, as at 1 January 1996, shall be paid retrospectively for the period 1 January to 31 March 1996.

(3) Wage Levels—1 April to 31 August 1996

A further increase of 2% shall be payable from the fist pay period on or after 1 April 1996.

(4) Wage Levels—1 July 1996 to 31 December 1996

A further increase of 2% shall be payable from the first pay period on or after 1 September 1996. Where productivity outcomes are identified which exceed the expected or forecast productivity savings flowing from the commitment of the parties to the provisions of Clause 12.—Productivity Outcomes, the excess amount will be recognised and made available for the wage increase specified at subclause (5) of this clause.

(5) Wage Levels—1 January 1997 to 30 June 1997

An increase of 1%, payable from the first pay period on or after 1 January 1997 subject to the achievement of the goal set out in Clause 13.—Dress Code, by 1 January 1997. Where productivity outcomes flowing from the commitment of the parties to the provisions of Clause 12.—Productivity Outcomes are identified, which exceed the expected or forecast productivity savings and result in a surplus over the costs of the increases provided for at subclauses (2), (3) and (4) of this clause, the parties agree that the surplus shall be taken into account in determining wage increases which may be provided for in any subsequent agreement.

8.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly but, where the usual pay day falls on a public service holiday, payment shall be made on the previous working day.

(2) A fortnight's wage shall be computed by dividing the annual wage by 313 and multiplying the result by 12.

(3) Wages shall be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union approved by the Treasurer or an accountable employee.

Provided that, where such form of payment is impracticable or where some exceptional circumstances exist, and, subject to prior written agreement between the employee and the Chief Executive Officer, payment by cheque may be made.

9.—LEAVE LOADING

The leave loading prescribed in the award, which is payable to employees who are subject to this agreement, shall be divided into twenty six equal instalments and paid to the employees in twenty six equal amounts throughout the year as a part of the normal wage.

10.—FIRE DUTIES

Where employees who are subject to this agreement agree to perform standby and/or overtime for the purposes of fire control, the provisions of CALM's schedule, Schedule C.—Department of Conservation and Land Management, of the Australian Workers Union (Western Australian Public Sector) Award 1992 shall apply.

Provided that, at the expiry of this agreement, the custom and practice arrangement that existed prior to this agreement being registered shall be resumed.

11.—MINIMUM CALL-OUT PAYMENT

An employee who is recalled to work within four hours of the cessation of his/her normal work period shall not be entitled to any minimum payment as a penalty, to the employer for such a recall.

Provided that any employee who is recalled twice within that same four hour period will be entitled to a minimum four hour penalty payment.

12.—PRODUCTIVITY OUTCOMES

(1) The parties to this agreement will participate in and support the following initiatives:

AWU employee's career development
Volunteer projects
Contractors
Continuous improvement
Business units
Flexibility
Health and fitness
Management of work, technology and resource utilisation
Training and skills acquisition.

(2) Wage increases, as provided for by Clause 7.—Wages may be paid subject to the achievement of the productivity outcomes detailed in Schedule E—Productivity Outcomes.

(3) As part of this agreement the parties agree to establish and reinforce processes which will facilitate employee involvement to initiate the processes and measure the outcomes.

(a) Individual employees in the workplace and work teams involved in identifying, implementing and quantifying productivity improvements.

(b) Workplace Consultative Committees implementing and quantifying productivity improvements.

(c) The single bargaining unit (SBU) will monitor and review the implementation of the initiatives and progress toward the achievement of those outcomes prescribed within Schedule E—Productivity Outcomes. Subject to the provisions of subparagraph (c)(iii) of this subclause the single bargaining unit will convene at intervals of no more than six months.

The SBU will carry out its role as prescribed herein through using the following mechanisms:

(i) A subcommittee shall be appointed by the SBU to liaise with the various workplace consultative committees which are operative within CALM.

(ii) This subcommittee is responsible for ensuring that regular measurements of productivity initiatives are taken and recorded and that these results are forwarded (via the subcommittee) to the SBU for consideration.

(iii) Where the subcommittee so requests then the SBU shall convene on an as required basis.

(iv) Consultative Committee reports shall be forwarded to the subcommittee on a regular basis, but at intervals not exceeding two months, for review.

13.—DRESS CODE

The parties agree to develop and agree upon a dress code for CALM by 1st January 1997. The agreement shall incorporate a resolution of existing inequities in the provision of uniforms and work clothing and shall provide a comprehensive code for dress sufficient to encompass all employees.

14.—DISPUTE RESOLUTION PROCEDURE

In connection with questions, disputes or difficulties arising under this agreement the parties shall, in seeking to resolve the matter, follow the following procedure:

(1) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

(2) The parties shall take an early and active part in discussion and negotiations aimed at preventing or settling disputes in accordance with the agreed procedure set out hereunder.

(3) Procedure for Settlement of Disputes

(a) The employee and the employee's supervisor should confer, clearly identify the facts and, where possible, resolve the issue.

(b) If the issue remains unresolved then the employee, the union representative, the supervisor and the department manager shall confer and, where possible, resolve the issue.

(c) If the issue remains unresolved then the union shall confer with the personnel and industrial relations manager on the matter and, where possible, resolve the issue.

(d) If the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

(4) While the above procedure is being followed no party shall be prejudiced as to the final settlement by the continuation of work in accordance with current procedure.

15.—RENEWAL OF AGREEMENT

No later than six weeks before the expiry of this agreement the parties shall meet to discuss the arrangements to apply after the agreement expires.

The parties agree that, where agreement is not reached to renew to replace this agreement within four months of the date of expiry of this agreement, the agreement may be cancelled upon written application to do so being made by either of the parties. In the event that this agreement is cancelled then the parties shall revert to the terms and conditions prescribed within the relevant awards as listed in subclause (3) of Clause 5.—Parties Bound.

16.—SIGNATURES

S. Shea

Chief Executive Officer
Department of Conservation and Land Management

J. Sharp-Collett

Secretary
The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch

15/4/1996

SCHEDULE A—WAGE RATES WITH EFFECT FROM 1ST JANUARY 1996

		Annual Wage $	Fortnightly Wage $
Advanced Engineering Tradesperson Level 2	C5	31,427	1,204.86
Advanced Engineering Tradesperson Level 1	C6	30,251	1,159.80
Engineering Tradesperson Special Class Level 2	C7	27,900	1,069.66
Engineering Tradesperson Special Class Level 1	C8	26,725	1,024.60
Engineering Tradesperson Level 2	C9	25,549	979.52
Engineering Tradesperson Level 1/Prod Syst Emp	C10	24,374	934.45
Engineering Employee Level 4	C11	22,589	866.02
Engineering Employee Level 3	C12	21,413	820.95
Engineering Employee Level 2	C13	20,141	722.16
Engineering Employee Level 1	C14	19,202	736.19

SCHEDULE B—WAGE RATES WITH EFFECT FROM 1ST APRIL 1996

		Annual Wage $	Fortnightly Wage $
Advanced Engineering Tradesperson Level 2	C5	32,055	1,228.96
Advanced Engineering Tradesperson Level 1	C6	30,856	1,183.00
Engineering Tradesperson Special Class Level 2	C7	28,458	1,091.05
Engineering Tradesperson Special Class Level 1	C8	27,259	1,045.08
Engineering Tradesperson Level 2	C9	26,060	999.11
Engineering Tradesperson Level 1/Prod Syst Emp	C10	24,861	953.14
Engineering Employee Level 4	C11	23,040	883.34
Engineering Employee Level 3	C12	21,841	837.37
Engineering Employee Level 2	C13	20,543	787.61
Engineering Employee Level 1	C14	19,586	750.92

SCHEDULE C—WAGE RATES WITH EFFECT FROM 1ST SEPTEMBER 1996

		Annual Wage $	Fortnightly Wage $
Advanced Engineering Tradesperson Level 2	C5	32,697	1,253.54
Advanced Engineering Tradesperson Level 1	C6	31,474	1,206.65
Engineering Tradesperson Special Class Level 2	C7	29,027	1,111.87
Engineering Tradesperson Special Class Level 1	C8	27,804	1,065.98
Engineering Tradesperson Level 2	C9	26,581	1,019.09
Engineering Tradesperson Level 1/Prod Syst Emp	C10	25,358	972.20
Engineering Employee Level 4	C11	23,501	901.01
Engineering Employee Level 3	C12	22,278	854.12
Engineering Employee Level 2	C13	20,954	803.36
Engineering Employee Level 1	C14	19,978	765.93

SCHEDULE D—WAGE RATES WITH EFFECT FROM 1ST JANUARY 1997

		Annual Wage $	Fortnightly Wage $
Advanced Engineering Tradesperson Level 2	C5	33,024	1,266.07
Advanced Engineering Tradesperson Level 1	C6	31,788	1,218.72
Engineering Tradesperson Special Class Level 2	C7	29,318	1,124.00
Engineering Tradesperson Special Class Level 1	C8	28,082	1,076.64
Engineering Tradesperson Level 2	C9	26,847	1,029.29
Engineering Tradesperson Level 1/Prod Syst Emp	C10	25,612	981.93
Engineering Employee Level 4	C11	23,736	910.02
Engineering Employee Level 3	C12	22,501	862.66
Engineering Employee Level 2	C13	21,163	811.39
Engineering Employee Level 1	C14	20,177	773.59

SCHEDULE E—PRODUCTIVITY OUTCOMES

Targets for productivity improvements were initiated and developed at the workplace level, at meetings of groups of CALM employees; called workgroups they represent a group of employees who share a common budget, supervisor, roles and responsibility. In some workplaces they met as members of formal JCCs, in others they met in informal groups.

They used the initiatives listed in Clause 12.—Productivity Outcomes as a guide for the development of productivity improvements. The productivity improvements they developed were unique for that particular group. In these workgroups some employees had management responsibilities over wages employees, officers and contractors. Consequently it can be said they were developed with the consent and support of local management.

Productivity improvements will be shared on the basis of one third for CALM, one third for the government and one third to be shared with staff as a salary increase subject to the following:

- Total productivity will be the sum of real and nominal savings.
- The one third share will not exceed 2% of payroll of those staff contributing to the productivity initiatives.
- The one third share was generally arrived at because it represented the real savings which could be used to fund the salary increase.
- All public service officers must be committed to the productivity initiatives through enterprise or workplace agreements.
- The formula for determining the percentage salary increase will be:

$$\text{Productivity achieved} \times \frac{1}{3} \times \frac{1}{\text{Payroll}} = \text{Pay increase (max 2\%)}$$

CALM has the willing compliance of its staff to participate in and be committed to the following outcomes in return for a share of the total productivity achieved during the period 1 January 1996—30 June 1996.

OUTCOME 1

22 FTEs WOULD BE REQUIRED TO ACHIEVE PRODUCTIVITY IMPROVEMENT IN ADMINISTRATIVE SERVICES, FIELD OPERATIONS AND PLANNING IF THE INITIATIVES ARE NOT IMPLEMENTED.

CALM is planning to utilise the time saved by staff as a result of the implementation of the following productivity improvements for the carrying out of other tasks; tasks which would require the additional input of 22 FTEs.

(1) Administrative Services. These include:

(a) answering telephone calls—Albany, Bunbury

(b) dealing with enquiries at front counters—Woodvale

(c) stationery management procedures—Perth, Walpole

(d) use of computers in writing and managing processes such as budgeting—Bunbury, CALMfire, Geraldton, Herbarium, Kalgoorlie, Manjimup, Merredin, Pemberton, Perth

(e) improving administrative process—Finance, Geraldton, Herbarium, Manjimup, Manjimup SIS, Mundaring, Walpole, Woodvale

(2) Field Operations. These include:

(a) improving fire management—CALMfire, Perth, Manjimup, Narrogin

(b) developing better forest assessment techniques—FMB, Manjimup SID

(c) managing remote areas—Kalgoorlie, Merredin

(d) improving other management—Manjimup, Swan Marine, Mundaring, Narrogin, Pemberton, SW Capes, Walpole

(e) use of more volunteers—Parks

(3) Planning. These include:

(a) meeting increasing demands by improving the planning process—Bunbury, Parks

(b) improving the planning process by designing improved data retrieval and management systems—FMB, LIB

OUTCOME 2

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE NON-SALARIED COST COMPONENT OF FIELD OPERATIONS

These improvements represent the additional savings made over and above those in Outcome 1 as a result of employees making savings in time when carrying out field operations. They include:

(1) improving fire management—CALMfire, Perth, Manjimup

(2) improving other management—Swan Marine, Mundaring, Narrogin, Pemberton, SW Capes, Walpole

OUTCOME 3

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE NON-SALARIED COST COMPONENT OF PLANNING

These improvements represent the additional savings made over and above those in Outcome 1 as a result of employees making savings in time when carrying out planning. These include:

(1) meeting increasing demands by improving the planning process—Parks

(2) improving the planning process by designing improved data retrieval and management systems—FMB

OUTCOME 4

REDUCTION IN OPERATING THE VEHICLE FLEET

Savings are made by making changes to the way the fleet is managed through reducing hire charges and running costs by:

(1) Operating existing vehicles more efficiently—Katanning, Kalgoorlie, Swan Marine, Merredin.

(2) Changing vehicles or modifying existing vehicles that better suit CALM's requirement—CALMfire, Mornington, Mundaring, SW Capes.

OUTCOME 5

REDUCTION IN OVERTIME

Savings are made through the completion of tasks by employees using flexible working hours. In some cases one of the benefits will be a reduction in the amount of overtime previously paid for these tasks—Albany, Katanning, Kalgoorlie, Pemberton.

OUTCOME 6

IMPROVEMENT IN PRODUCTIVITY THROUGH THE REDUCTION IN TIME TAKEN TO COMPLETE WORK LEADING TO A REDUCTION IN THE COST OF OPERATIONS WHICH EARN REVENUE.

The general thrust of these improvements is for employees to save time when carrying out operations in CALM which earn revenue. They include using a combination of flexible working hours, continuous improvement, new technology and changes in work practice to make these operations more competitive in:

(1) Nurseries eg, PCC and Narrogin.

(2) Hardwood and softwood silviculture and logging operations—Native Forest and Softwood Business Units, Mundaring, Narrogin.

OUTCOME 7

EXPANSION OF SERVICES PROVIDED TO EXTERNAL CUSTOMERS

Employees have been looking at ways in which they can help improve and expand upon the services they provides to their external customers. These services include the provision of recreation opportunities by employees based at Manjimup SID, Kalgoorlie, Pemberton and Walpole.

OUTCOME 8

INCREASE IN EXTERNAL FUNDING OVER AND ABOVE EXISTING LEVELS

Employees have been looking at ways in which they can help CALM improve its funding situation by obtaining funds from external sources, such as grants—Mundaring.

SUMMARY OF PRODUCTIVITY IMPROVEMENTS FOR THE PERIOD 1 JANUARY 1996-30 JUNE 1996

	Estimated Nom Savings $	Estimated Real Savings $
Outcome 1		
2 FTEs would be required to achieve the productivity improvements in administrative services, planning, and field operations if the initiatives are not implemented.		
Total	649,350	9,840
Outcome 2		
Improvement in productivity through reduction in time taken to complete work, leading to a reduction in the non-salaried cost component.		
Total	46,500	5,750
Outcome 3		
Improvement in productivity through reduction in time taken to complete work, leading to a reduction in the non-salaried cost component of planning.		
Total	930,000	28,000
Outcome 4		
Reduction in cost of operating vehicle fleet		
Total	60,850	19,000
Outcome 5		
Reduction in overtime		
Total	14,450	4,000
Outcome 6		
Improvement in productivity through reduction in time taken to complete work, leading to a reduction in cost of operations which earn revenue.		
Total	77,000	542,500
Outcome 7		
Expansion of services provided to external customers		
Total	31,000	1,700
Outcome 8		
Increase in external funding over and above existing levels		
Total	20,000	0
TOTAL FOR CALM	1,829,150	610,790

DEPARTMENT OF ENVIRONMENTAL PROTECTION 1996 ENTERPRISE AGREEMENT No. PSG AG 8 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Environmental Protection

and

The Civil Service Association of Western Australia Incorporated and Another.

No. PSG AG 8 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R. H. GIFFORD.

21 May 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT
No. PSG AG 8 OF 1996.

HAVING heard Mr M. Bond on behalf of the Applicant and Ms J. Blake 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 Department of Environmental Protection 1996 Enterprise Agreement, No. PSG AG 8 of 1996, 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 Department of Environmental Protection 1996 Enterprise Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 SEP
11. Objectives of the Agreement
12. Productivity Improvements and Milestones
13. Flexible Working Conditions
14. Optional Working Conditions
15. Transition Arrangements
16. Salary Increases
17. Dispute Settlement Procedure
18. Future Issues for Negotiation
19. Number of Employees
20. Signatures to the Agreement
Schedule A—Salaries
Schedule B—Salaries—Specified Callings

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Department of Environmental Protection employees, including Senior Executive Service employees with the exception of the Chief Executive officer, working in the Department of Environmental Protection who are members of or eligible to be members of the associations/unions party to this Agreement.

4.—PARTIES TO THE AGREEMENT

Employer

Chief Executive Officer, Department of Environmental Protection

Unions

- Civil Service Association of Western Australia Incorporated
- Media, Entertainment and Arts Alliance

5.—DEFINITIONS

"*Agreement*" The Department of Environmental Protection Enterprise Agreement 1996

"*Department*" The Department of Environmental Protection

"*Employee*" For the purpose of this Agreement, someone who is referred to in Clause 3

"*Employer*" The Chief Executive Officer, Department of Environmental Protection

"*Government*" The State Government of Western Australia

"*Minister*" The Minister or Ministers of the Crown responsible for the administration of the Department of Environmental Protection

"*Unions*" The Unions and Associations listed as parties to this Agreement which are listed in Clause 4 of this Agreement

"*WAIRC*" The Western Australian Industrial Relations Commission

"*Parties*" Means the employer, the Unions and employees when referred to jointly in this Agreement

"*CSA*" The Civil Service Association of Western Australia Incorporated

"*Family*" In relation to a person, means a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee (as defined in the Equal Opportunity Act (1984) of Western Australia)

"Ordinary average daily hours" Means 7 hours 30 minutes for employees working 37 hours 30 minutes per week and 7 hours and 48 minutes for employees working 39 hours per week.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement will operate from a date, three months prior to the date of lodgement with the WAIRC, and shall remain in operation for a period of twelve (12) months from the date of registration.

(2) The parties will review this Agreement six months prior to the expiration of this Agreement to commence negotiations for a new agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement, except where the Award rate is higher, in which case the Award shall apply.

(5) The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

7.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this Agreement or provided for in a National or State Wage Case decision.

(2) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This Agreement shall be read in conjunction with the Public Service Award 1992 which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Department of Environmental Protection, Civil Service Association of Western Australia Incorporated, with the Civil Service Association as the agreed representative for the Media, Entertainment and Arts Alliance.

(3) The Single Bargaining Unit has reached agreement on the terms of this Agreement.

(4) The approval process involved all employees at the workplace. All employees received a copy of the Agreement. The majority of employees voted for endorsement of the Agreement.

(5) The Single Bargaining Unit will appoint a representative committee to monitor progress toward achievement of milestones.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—OBJECTIVES OF THE AGREEMENT

The shared objectives of the parties are to—

- Satisfy the requirements of clients and stakeholders through the provision of effective, efficient and reliable services;
- Gain employee commitment and contribution to the short-term and long-term direction of the Department of Environmental Protection;
- Detail specific measures to improve the effectiveness, productivity and efficiency of the Department of Environmental Protection;
- Gain management, Union and employee endorsement and commitment for the implementation of measures that will improve the effectiveness, productivity and efficiency within the Department of Environmental Protection;
- Improve the quality of the working life and to achieve more flexible working conditions for all employees within the Department of Environmental Protection; and
- Ensure that gains are shared between the Department of Environmental Protection, its employees and the Government on behalf of the Western Australian community.

12.—PRODUCTIVITY IMPROVEMENTS AND MILESTONES

The Department's objectives are to—

- ensure the environment is managed so that it is conserved and enhanced;
- ensure that development in Western Australia is environmentally acceptable.

The following productivity improvements have been initiated to achieve these objectives.

Corporate Productivity Improvements

(1) **To obtain commitment to and ownership of the strategies and initiatives** developed to achieve the Department's objectives as detailed in the Corporate Strategic Plan, employees and management agree to pursue the following initiatives during the life of this Agreement.

These changes represent a fundamental shift in corporate culture, and will necessitate employees developing a range of new skills and a broader national and international focus.

To ensure the environment is managed so that it is conserved or enhanced—the main initiatives are—

- *Conservation policy:* formulate policy to protect special portions of the environment and investigate environmental problems and issues;

Specific outcomes will include—

— publication of State of Environment report;

— distribution of System 6 Study (areas of conservation value on Swan Coastal Plain) report for public comment;

— establishment of strategy for managing the State's rangelands.

- *Management of environmental systems:* plan and develop projects to manage environmental systems such as watersheds, airsheds and other receiving environments;

Specific outcomes will include—

— publication of State Salinity Strategy;

— environmental management strategies to address issues identified in the Perth Photochemical Smog Study, Perth Haze Study, Southern Metropolitan Coastal Waters Study and the Perth Coastal Waters Study;

— commencement of major air quality and marine studies on the North West Shelf.

- *Management of wastes to the environment:* develop and implement strategies to facilitate sound approaches to waste management.

Specific outcomes will include—

— introduction of a new licensing system for 300 waste management facilities;

— establishment of a system to manage low level hazardous wastes through secure landfill, including waste from contaminated sites;

— implementation of Wastetrack system, for registering and monitoring 3,500 grease traps.

To ensure that development in Western Australia is environmentally acceptable—the main initiatives are—

- *Environmental protection policy:* formulate statutory environmental protection policies under Part III of the Environmental Protection Act and, general policies regarding development;

Specific outcomes will include—

— publication of South-West Wetlands Environmental Protection policy;

— submission of the Swan Canning Rivers Environmental Protection policy to the Minister;

— establishment of groundwater protective measures in the Gnangara and Jandakot mounds, major sources of Perth's water supply.

- *Environmental evaluation of new proposals:* conduct environmental evaluation of new proposals through formal assessments as well as providing informal advice;

Specific outcomes will include—

— drafting of legislation which will harmonise environmental assessment and statutory planning processes (establishing and implementing procedures to efficiently deal with new development proposals);

— initiation of strategies for environmental assessment, to provide clear and early guidance in advance of project development, especially for industrial estates;

— finalisation of QA and continuous improvement processes for environmental impact assessments.

- *Environmental management of existing projects:* manage existing projects through pollution prevention and enforcement of environmental conditions.

Specific outcomes will include—

— implementation of a new industry licensing system, within a framework of Best Practice licences;

— completion of negotiations with industry, regarding new licence fees;

— introduction of new and innovative regulations for noise abatement and control;

— drafting of environmental regulations covering a wide range of industries, including sandblasting, cement product manufacturing, fibreglass manufacture, lead content in petrol.

(2) Other specific initiatives to be achieved during the life of this Agreement are—

- Savings being achieved and effectiveness improved through introduction of a modern geographic information system. The utilisation of this technology will necessitate a significant upgrading of employee skills, to handle more demanding and complex tasks.

Specific projects to be undertaken, include—

— linking the new licensing system to GIS data bases;

— providing rapid and accurate information to the Environmental Protection Authority, as part of the environmental impact assessment process.

- Reduced maintenance time and expenditure achieved through accrual accounting leading to timely equipment replacement rather than extensive maintenance effort on capital equipment;
- The commencement of restructuring licence fees and removing waste management subsidies while investing in strategic environmental assessment and policy development in areas of rapid industrial development of the State, achieving a financial return to Government.

  The effective implementation of these arrangements will—

  — require employees to move from reviewing individual industry compliance with standards to an integrated, holistic management system based on ISO 14000 and the application of best practice environmental management;

  — provide full cost recovery for pollution services;

  — reduce costs to developers arising from uncertainty and delay in project assessment.

Productivity Measurement

During the life of this Agreement the following productivity measurement initiatives will be investigated and, if appropriate, implemented. Productivity achievements from these initiatives will be identified, and any productivity gains will be incorporated into a quantum pay increase in the next Agreement.

(3) To assist in achieving the Department's corporate objectives, the development of a performance/productivity measurement system will commence. Without limiting the scope of the performance/productivity measurement system, issues to be addressed are—

- Key aims for the Department arising out of the program statements, corporate strategic and business planning process;
- Comprehensive productivity and performance indicators based on Key Success Areas and trends in continuous improvements, and to be linked with established Program and Annual Report Indicators;
- Baseline measures and targets which clearly establish and describe the Key Success Areas;
- An appropriate performance/productivity measurement system which involves the parties to the Agreement, which facilitates a culture of continuous improvement over time;
- Customer feedback and input together with measures of customer service with the Department's service efficiency and effectiveness;
- Review strategies; and
- Gain sharing mechanisms.

A team-based approach involving all levels of employees will be utilised to develop the performance/productivity measurement system.

Milestone: A documented and agreed system approved by the Chief Executive Officer, to be developed by 31 December, 1996.

(4) A review of the Department's approach to employee training and advancement will be investigated and implemented, if appropriate. This will be essentially an 'in-house' project and employees will be consulted during this process. Outcomes expected from this review are—

- Completion of the skills analysis and development of a skills inventory for current employees;
- Determination of requirements to ensure retention and recognition of technical, scientific and professional skills;
- Development and provision of a training programme to ensure employees possess the necessary skills to meet defined organisational requirements;
- Selection and advancement of employees based on reviewed criteria.

Milestone: To be developed by 30 June 1996.

13.—FLEXIBLE WORKING CONDITIONS

In order to provide greater ability for the Department to manage its workload and to achieve better leave flexibility for employees, the following repackaging of conditions are incorporated in this Agreement. Conditions in Clause 14.—Optional Working Conditions, of this Agreement, apply over and above the conditions in this Clause for employees covered by Clause 16(2)(b).

(1) Flexible Working Hours

(a) It is agreed that, primarily, the provision of flexible working hours will take account of customer needs, business flexibility and the preferences of employees.

The purpose of such flexible arrangements is to ensure—

- appropriate allocation of employee resources to meet demand, especially peak loads, and
- provide effective customer response during the Department's business hours of 8am to 5pm.

It is the clear responsibility of managers and employees to ensure that these requirements are met.

(b) Full time employees will work 450 hours over a 12 week cycle (6 pay periods).

(c) Unless in the Chief Executive Officer's opinion, exceptional circumstances prevail, employees utilising flexitime provisions will not accrue more than 11 hours of flexitime debits or 15 hours credits in any 12 weekly (6 pay period) cycle. Credits and debits may be carried over to the next pay period.

(d) Unless in the Chief Executive Officer's opinion, exceptional circumstances prevail, eligible employees will not take more than 15 hours of flexi leave in any 4 weekly (2 pay period) cycle. The granting of such leave is subject to the Department's operational requirements and count towards the required average of 37.5 hours per week.

(e) Officers must work in the core periods of 9.30am to 12 noon and 2.00pm to 3.30pm unless—

- absent due to illness;
- on approved leave, or
- subject to negotiation, and with approval of the CEO, operating on an alternative working arrangement.

(2) Ordinary Hours of Work

(a) Ordinary hours of work shall be between 7.00am to 7.00pm, Monday to Friday. Ordinary hours may be worked on Saturday with prior agreement of supervisor and employee.

(b) Sufficient employees, as determined by the Chief Executive Officer, shall be on duty to meet the needs of the public, and both internal and external clients between 8.00am to 5.00pm, Monday to Friday.

(c) Overtime will not be payable unless the total time worked in any day, Monday to Friday, exceeds the ordinary average daily hours plus thirty (30) minutes.

(3) Ceremonial/Cultural Leave

(a) An employee covered by this Agreement is entitled to time off for tribal/ceremonial/cultural purposes.

(b) Reasonable time off without pay may be granted by the Chief Executive Officer taking account of the employee's tribal/ceremonial/cultural reasons and Departmental convenience.

(4) Long Service Leave

(a) An employee is entitled to 13 weeks long service leave after a period of seven years continuous employment.

(b) By agreement in writing between the Chief Executive Officer and employee, an equivalent benefit, in payment, can be accepted by the employee instead of taking the accrued long service leave entitlement.

(c) By agreement in writing between the Chief Executive Officer and employee, and subject to the Department's operational requirements, long service leave may be taken at half the normal rate of pay and hence for double the period of time.

(d) For the purposes of determining an employee's long service leave entitlement, continuous employment—

- Includes any period during which the employee is absent on approved paid leave;
- Does not include any period exceeding two weeks during which the employee is on leave without pay or parental leave.

(e) The minimum period of long service leave that can be taken is five (5) working days or its equivalent.

(5) Parental Leave

Eligibility for Parental Leave

(a) An employee is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth of a child to, or the placement of a child on adoption with, the employee or the employee's spouse/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse, two week's leave may be taken prior to or at the birth of the child concurrently with parental leave taken by the pregnant employee.

Other Leave Entitlements

(c) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(d) An employee may extend the maximum period of parental leave with a period of leave without pay subject to Departmental approval.

(e) An employee on parental leave is not entitled to paid sick leave and other paid Award absences except where otherwise provided for in this Clause.

Notice and Variation

(f) The employee shall give not less than four weeks notice in writing to the Department of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(g) An employee seeking to adopt a child shall not be in breach of subclause (5)(f) of this Clause as a consequence of failure to give the stipulated period of notice, if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.

(h) At any time during the period of leave the employee may elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

Transfer to a Safe Job

(i) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of parental leave.

(j) 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 parental leave for the purposes of subclause (5)(m) of this Clause.

Effect on Leave on Employment Contract

(k) Fixed Term Contract

An employee for a fixed term contract shall have the same entitlement to parental leave, however, the period of leave granted shall not extend beyond the term of that contract.

(l) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not count as qualifying service for leave purposes.

Return to Work

(m) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave or, if not available, a comparable position. Where an employee was transferred to a safe job pursuant to subclauses (5)(i) and (5)(j) of this Clause, the employee is entitled to return to the position occupied immediately prior to the transfer or, if not available, a comparable position.

(6) Sick Leave

(a) The Department will credit each full time employee with the following sick leave credits, which are cumulative—

	Sick Leave on Full Pay	Sick Leave on Half Pay
On the day of initial appointment	5 days	2 days
On the completion of 6 months continuous service	5 days	3 days
On the completion of 12 months continuous service	10 days	5 days
On the completion of each further period of 12 months continuous service	10 days	5 days

(b) An employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent employee. An employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of the contract.

(c) A part-time employee shall be entitled to the same sick leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment of sick leave shall only be made for those hours that would normally have been worked had the employee not been on sick leave.

(d) Any leave without pay, including the proportion of annual recreational leave and long service leave on half pay which is not paid, will proportionally impact the accreditation of sick leave to the effect of the date of accrual of leave in this clause.

(7) Carer's Leave

(a) An employee with responsibilities in relation to either members of his/her family or members of his/her household who need his/her care and support, shall be entitled to use up to 5 days per annum of accrued sick leave credits to provide care and support for such persons.

(b) The employee is required to produce a medical certificate if care and support requirements exceed two consecutive working days.

(8) Annual Leave Loading

Annual leave loading has been incorporated into the quantum salary increase associated with this Agreement.

14.—OPTIONAL WORKING CONDITIONS

For employees who avail themselves of the quantum pay increase under subclause (2)(b) of Clause 16.—Salary Increases, of this Agreement, the following repackaging of conditions apply over and above the conditions detailed in Clause 13.—Flexible Working Conditions of this Agreement.

(1) Hours of duty

(a) An employee may be employed on a full time, part-time or fixed term contract basis.

(b) A full time employee is an employee engaged in regular and continuing employment for an average of 39 hours per week.

For employees at Level 6 and above, working hours of 39 hours per week is a minimum requirement. It is expected that in the normal course of duties, these employees will work such reasonable additional hours as are necessary to meet the requirements of the position. These arrangements will be determined in consultation with the Chief Executive Officer.

(c) (i) A part-time employee is an employee who is engaged in regular and continuing employment for less than an average of 39 hours per week.

(ii) The rate of pay for a part-time employee will be proportionate to the hours worked relative to a full time employee.

(iii) A part-time employee will be entitled to the same leave and conditions described in this Agreement as for a full time employee, proportionate to the hours worked.

(iv) Payment of a part-time employee proceeding on annual or long service leave will be calculated on a pro rata basis having regard for any variations to the employee's ordinary working hours during the accrual period.

(v) Except with the prior agreement of the part-time employee, the employer will give four weeks notice of any requirement to vary the normal days or hours of work.

(d) Full time employees may be granted approval by the Chief Executive Officer to work part-time, subject to the operations of the Department not being disrupted unduly and appropriate work, for their classification and experience, being available.

(e) Part-time employees may be granted approval by the Chief Executive Officer to work full time, subject to—

- the operations of the Department not being disrupted unduly;
- resources being available; and
- work appropriate to their classification and experience, being available.

(2) Flexible Working Hours

(a) It is agreed that the provision of flexible working hours will take account of customer needs, business flexibility and the preferences of employees.

(b) Full time employees will work 468 hours over a 12 week cycle (6 pay periods).

(c) Unless in a Director's opinion exceptional circumstances prevail, employees utilising flexitime provisions will not accrue more than 11 hours 42 minutes of flexitime debits or 15 hours 36 minutes of flexitime credits in any 12 weekly (6 pay period) cycle. Credits and debits may be carried over to the next period.

(d) Unless in a Director's opinion exceptional circumstances prevail, eligible employees will not take more than 15 hours 36 minutes of flexi leave in any 4 weekly (2 pay period) cycle. The granting of such leave is subject to the Department's operational requirements and count towards the required average of 39 hours per week.

(3) Short Leave

The facility for short leave of 22.5 hours in any calendar year is no longer available for employees choosing the Optional Working Conditions in this Clause.

15.—TRANSITION ARRANGEMENTS

(1) Accrued annual leave, long service leave and sick leave (expressed as days) will be carried over and recognised for the purposes of this Agreement.

(2) Accrued annual leave, long service or sick leave entitlement paid during the term of this Agreement is to be at the appropriate rate the employee is entitled to under this Agreement.

(3) Flexible working conditions as outlined in Clause 13.—Flexible Working Conditions and Clause 14.—Optional Working Conditions will be applicable from the date of registration of the Agreement.

16.—SALARY INCREASES

(1) The salary increases are payable on the basis of implementation and continued co-operation of all parties in implementation of those improvements in productivity and/or work practice changes contained in this Agreement, and are detailed in Schedules A and B.

(2) (a) Employees will receive salary increases according to Schedules A and B of—

Option A—

- 3.0% as from three months prior to the date of lodgement with the WAIRC;
- 1.35% for annualisation of annual leave loading; and
- a further 1.00% on the development and implementation of a performance/productivity measurement system by 31 December 1996.

(b) Employees electing to vary working conditions as outlined in Clause 14.—Optional Working Conditions will receive salary increases according to Schedules A and B of—

Option B—

- 7.45% as from three months prior to the date of lodgement with the WAIRC;
- 1.35% for annualisation of annual leave loading; and
- a further 1.00% on the development and implementation of a performance/productivity measurement system by 31 December 1996.

(3) Within fourteen (14) days of registration of the Agreement, each Department employee will formally nominate which employment option they have chosen. This nomination will not be varied during the period of the Agreement.

17.—DISPUTE SETTLEMENT PROCEDURE

(1) For a Union member, in the event of any disputes, questions or difficulties between the parties as to the interpretation and implementation of this Agreement, the following procedures shall apply—

(a) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA representative or a person of their choosing. The supervisor may be accompanied by a representative nominated by the Chief Executive Officer.

(b) If the matter is not resolved within five (5) working days following the discussion in accordance with paragraph (a) hereof, the matter shall be referred by the CSA representative to the Department's Chief Executive Officer or his/her nominee for resolution.

(c) If the matter is not resolved within five (5) working days of the CSA representative's notification of the dispute to the Department's Chief Executive Officer, it may be referred by either party to the WAIRC.

(2) For a non-Union member, the Department's grievance resolution procedure will be followed.

18.—FUTURE ISSUES FOR NEGOTIATION

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. Issues may include, but will not be restricted to—

- measures to achieve greater flexibility in employee resources to manage peaks in workloads;
- flexible remuneration;
- telecommuting (home based work);
- child care facilities;
- accommodation/warehousing of office space;
- abolition of public service holidays.

19.—NUMBER OF EMPLOYEES

As at 18 January 1996, the number of employees in the Department was 167.

20.—SIGNATURES TO THE AGREEMENT

EMPLOYER

Signed by the Chief Executive Officer,

Department of Environmental Protection: Bryan Jenkins

Date 17/4/96

UNIONS

Signed for and on behalf of the

Civil Service Association, Western Australia Incorporated by:

.....

Date 18/4/96

Signed for and on behalf of

Media, Entertainment and Arts Alliance by:

.....

Date 18/4/96

SCHEDULE A—SALARY Schedule.

Subject to Clause 10.—Salaries of the Public Service Award 1992, the annual salaries under this Enterprise Agreement applicable to employees not covered by Clause 11.—Salaries Specified Callings, of the Award, shall be those contained in Schedule A.

Level	Current Annual Salary	Payable with effect from 3 months prior to the date of lodgement		Payable with effect from 1/1/97	
		Option A	Option B	Option A	Option B
Level 1	10,873	11,346	11,830	11,459	11,948
17 year old	12,707	13,260	13,825	13,392	13,963
18 year old	14,822	15,467	16,126	15,621	16,288
19 year old	17,157	17,903	18,667	18,082	18,853
20 year old	19,267	20,105	20,962	20,306	21,172
1st year	21,165	22,086	23,028	22,307	23,258
2nd year	21,817	22,766	23,737	22,994	23,974
3rd year	22,468	23,445	24,445	23,680	24,690
4th year	23,115	24,121	25,149	24,362	25,401
5th year	23,766	24,800	25,857	25,048	26,116
6th year	24,417	25,479	26,566	25,734	26,831
7th year	25,166	26,261	27,381	26,523	27,654
8th year	25,684	26,801	27,944	27,069	28,224
9th year	26,450	27,601	28,778	27,877	29,065
Level 2	27,367	28,557	29,775	28,843	30,073
2nd year	28,070	29,291	30,540	29,584	30,846
3rd year	28,809	30,062	31,344	30,363	31,658
4th year	29,590	30,877	32,194	31,186	32,516
5th year	30,407	31,730	33,083	32,047	33,414
Level 3	31,530	32,902	34,305	33,231	34,648
2nd year	32,405	33,815	35,257	34,153	35,609
3rd year	33,307	34,756	36,238	35,103	36,600
4th year	34,233	35,722	37,246	36,079	37,618
Level 4	35,503	37,047	38,627	37,418	39,014
2nd year	36,498	38,086	39,710	38,467	40,107
3rd year	37,522	39,154	40,824	39,546	41,232
Level 5	39,494	41,212	42,969	41,624	43,399
2nd year	40,827	42,603	44,420	43,029	44,864
3rd year	42,212	44,048	45,927	44,489	46,386
4th year	43,649	45,548	47,490	46,003	47,965
Level 6	45,960	47,959	50,004	48,439	50,505
2nd year	47,531	49,599	51,714	50,095	52,231
3rd year	49,157	51,295	53,483	51,808	54,018
4th year	50,893	53,107	55,372	53,638	55,925
Level 7	53,555	55,885	58,268	56,443	58,851
2nd year	55,397	57,807	60,272	58,385	60,875
3rd year	57,401	59,898	62,452	60,497	63,077
Level 8	60,658	63,297	65,996	63,930	66,656
2nd year	62,991	65,731	68,534	66,388	69,220
3rd year	65,884	68,750	71,682	69,437	72,399
Level 9	69,497	72,520	75,613	73,245	76,369
2nd year	71,938	75,067	78,269	75,818	79,051
3rd year	74,722	77,972	81,298	78,752	82,111
Class 1	78,932	82,366	85,878	83,189	86,737
Class 2	83,142	86,759	90,458	87,626	91,363
Class 3	87,350	91,150	95,037	92,061	95,987
Class 4	91,560	95,543	99,617	96,498	100,613

SCHEDULE B—SALARIES—SPECIFIED CALLINGS

Subject to Clause 11.—Salaries Specified Callings of the Public Service Award 1992, the annual salaries under this Enterprise Agreement applicable to employees covered by Clause 11.—Salaries Specified Callings, of the Award, shall be those contained in Schedule B.

Level	Current Annual Salary	Payable with effect from 3 months prior to the date of lodgement		Payable with effect from 1/1/97	
		Option A	Option B	Option A	Option B
Level 2/4 yr 1	27,367	28,557	29,775	28,843	30,073
2/4 Yr 2	28,809	30,062	31,344	30,363	31,658
2/4 Yr 3	30,407	31,730	33,083	32,047	33,414
2/4 Yr 4	32,405	33,815	35,257	34,153	35,609
2/4 Yr 5	35,503	37,047	38,627	37,418	39,014
2/4 Yr 6	37,522	39,154	40,824	39,546	41,232
Level 5	39,494	41,212	42,969	41,624	43,399
2nd year	40,827	42,603	44,420	43,029	44,864
3rd year	42,212	44,048	45,927	44,489	46,386
4th year	43,649	45,548	47,490	46,003	47,965
Level 6	45,960	47,959	50,004	48,439	50,505
2nd year	47,531	49,599	51,714	50,095	52,231
3rd year	49,157	51,295	53,483	51,808	54,018
4th year	50,893	53,107	55,372	53,638	55,925
Level 7	53,555	55,885	58,268	56,443	58,851
2nd year	55,397	57,807	60,272	58,385	60,875
3rd year	57,401	59,898	62,452	60,497	63,077
Level 8	60,658	63,297	65,996	63,930	66,565
2nd year	62,991	65,731	68,534	66,388	69,220
3rd year	65,884	68,750	71,682	69,437	72,399

DEPARTMENT OF LAND ADMINISTRATION
ENTERPRISE BARGAINING
No. PSA AG 8 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department of Land Administration

No. PSA AG 8 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R. H. GIFFORD

13 May 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT

No. PSA AG 8 of 1996.

Having heard Mr R. O'Byrne on behalf of the Applicant and Ms J. Sales 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 Department of Land Administration Enterprise Bargaining Agreement, No. PSA AG 8 of 1996, 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 Department of Land Administration Enterprise Bargaining Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees Covered
6. Definitions
7. Relationship to Parent Award
8. Duration of Agreement
9. Single Bargaining Unit (SBU)
10. Salary
11. Bonus Payment
12. Performance Allowance
13. Hours of Work
14. Flexible Working Hours
15. Long Service Leave
16. Ceremonial/Cultural Leave
17 Future Productivity
18. Dispute Resolution Procedure
19. Signatories
Schedule A—Salaries
Schedule B—1995 Productivity Improvement Plan
Schedule C—1996 Productivity Improvement Plan

3.—SCOPE

The Agreement shall apply to Department of Land Administration Employees in Western Australia eligible to be members of The Civil Service Association of Western Australia (Inc.).

4.—PARTIES BOUND

(1) The Employer:

The Chief Executive of the Department of Land Administration.

(2) The Union:

The Civil Service Association of Western Australia (Inc).

(3) The parties bound by this Agreement will oppose any subsequent application by any other body or organisation to be joined to this Agreement.

5.—NUMBER OF EMPLOYEES COVERED

It is estimated that 120 employees will be covered by this Agreement.

6.—DEFINITIONS

"DOLA" means the Department of Land Administration of Western Australia

"Employee" for the purpose of this Agreement means, someone who is referred to at Clause 3.—Scope of the Agreement.

"Employer" means the Chief Executive of the Department of Land Administration of Western Australia

"Parties" means the Employer and the Employee when referred to jointly in these terms and conditions.

"Government" means the State Government of Western Australia

"Minister" means the Hon Minister for Lands

"Union" means the Association listed as party to this agreement which is listed in Clause 4 of this Agreement.

"WAIRC" means the Western Australian Industrial Relations Commission

7.—RELATIONSHIP TO PARENT AWARD

The Enterprise Bargaining Agreement shall be read wholly in conjunction with the Public Service Award 1992 which applies to the parties bound by this document. In the case of any inconsistencies this Agreement shall have precedence to the extent of the inconsistencies.

8.—DURATION OF AGREEMENT

(1) This Agreement shall operate from the beginning of the pay period during which this Agreement is registered in the Western Australian Industrial Relations Commission and shall remain in force until 31 December 1997.

(2) The parties will review this Agreement six months prior to the date of expiration and begin negotiations on its renewal or replacement.

(3) Following the process of reviewing this Agreement it will be renewed or replaced by another Agreement or cancelled as appropriate.

9.—SINGLE BARGAINING UNIT (SBU)

For the purpose of negotiating this and future Enterprise Bargaining Agreements a Single Bargaining Unit has been formed as a representative of all parties. The Single Bargaining Unit will continue to monitor the implementation of the Agreement and be responsible for its replacement.

10.—SALARY

(1) The Employee's salary will be increased by 4.7% with effect from 1 January 1996 and paid in accordance with Column A of Schedule A of this Agreement. This increase is in recognition of productivity improvements achieved through the implementation of DOLA's 1995 Productivity Improvement Plan (Refer Schedule B).

(2) On registration of DOLA's Enterprise Bargaining Agreement the Employee's salary will be increased by 1.3% and paid in accordance with Column B of Schedule A of this Agreement.

(3) The Employee's salary will be increased by 2% from 1 July 1996 following confirmation by the parties that the productivity performance targets have been achieved. This increase will be paid in accordance with Column C of Schedule A of this Agreement. The productivity performance targets are identified in Part 1 of the DOLA 1996 Productivity Improvement Plan (Refer Schedule C).

(4) The salary of the Employee will be increased by 2% from 1 January 1997 following confirmation by the parties that the productivity performance targets have been achieved. This increase will be paid in accordance with Column D of Schedule A of this Agreement. The productivity performance targets are identified in Part 2 of the DOLA 1996 Productivity Improvement Plan (Refer Schedule C).

(5) If the Productivity Improvement Plan targets are only partially met then a proportion of the increases shown in Columns C and D of Schedule A, on a pro-rata basis, will be paid to the Employee.

11.—BONUS PAYMENT

(1) The Employee will receive a bonus of $250.00, or a pro rata portion of $250.00 in accordance with sub clauses (3) (4) and (5) of this clause for each period:

(a) commencing 1 January and ending 30 June,

(b) commencing 1 July and ending 31 December,

if during the period:

- no sick leave claim is submitted (flexi leave or annual leave can be taken in place of sick leave),
- no unauthorised absences from the workplace are confirmed and recorded,
- no more than a total of 4 weeks of annual leave and long service leave is taken, or 5 weeks for an employee who is entitled to 5 weeks annual leave by virtue of being located North of 26º South latitude, and
- no unpaid leave is taken.

If the Employee takes any Public Service Award leave entitlement other than those referred to in subclause (1) of this clause, this will not affect the Employee's entitlement to the bonus payment.

(2) For the purposes of determining the Employee's entitlement to the performance bonus payment the number of hours worked for the period commencing 1 January and 30 June and commencing 1 July and ending 31 December cannot be joined.

(3) The payment for the period commencing 1 January 1996 and ending 30 June 1996 will be a pro rata payment based on the date of operation of this Agreement.

(4) If the Employee is a part time Employee, then pro rata performance bonus payments, based on the number of hours worked, will be paid provided that a minimum of 152 hours is worked by the part time Employee in the periods referred to in sub clauses (1)(a) and (1)(b) of this clause.

(5) If an Employee (including a part time Employee) commences after the date of operation of this Agreement, then a pro rata bonus payment will be paid for the period in which the Employee commences provided that the Employee works at least 152 hours during that period and satisfies the provisions of sub clause (1) of this clause. The pro rata payment will be calculated from the date on which the Employee commences.

12.—PERFORMANCE ALLOWANCE

(1) From 1 July 1996 the Employee may receive an allowance of up to 2% of the Employee's salary if the Employee meets specific performance criteria to be developed in consultation with the Civil Service Association of Western Australia (Inc).

(2) Payment of the allowance will be for a specified period.

13.—HOURS OF WORK

(1) The Employee's normal hours of work will be an average of 38 hours per week. These hours are to be worked in accordance with Clause 14.—Flexible Working Hours.

(2) For the purposes of this Agreement relevant clauses in the Public Service Award 1992 shall be varied to accommodate the following:

(a) An Employee's normal hours of work will be an average of 38 hours per week.

(b) A normal work day will be an average of 7 hours and 36 minutes.

14.—FLEXIBLE WORKING HOURS

(1) Flexible working hours means that Employees choose their hours of work within the hours of 6.00 am and 7.00 pm during a five day week, subject to sub clauses (2) and (3) of this clause.

(2) Employees may negotiate their own daily starting and finishing time, as long as they complete the required working hours (full time or part time) up to 152 hours every four weeks.

(3) Resource needs and hours required to be worked will be determined within the work environment and agreed by the Supervisor and the Employee to decide the most suitable working arrangements.

(4) Where a roster is in operation a minimum of one day's notice will be required by either party to adjust the roster. If requested by either party such notice will be in writing.

(5) A monitoring system is to be established for hours worked and work output which can be used for the purposes of confirming hours of attendance and productivity for payment and audit purposes.

(6) When an Employee is directed to work overtime, then overtime rates in accordance with Clause 18.—Overtime Allowance of the Public Service Award will be paid.

(7) Hours of overtime worked will not form part of the flexible working hours credit for the purpose of calculating the 152 hours required to be worked under normal conditions.

(8) Within each four (4) week period, extra hours may be accumulated and used at a later date. Hours may be accumulated up to the equivalent of 38 hours at the conclusion of any 4 week accrual period.

(9) These accredited hours may be taken in any hourly composition agreed by the Supervisor.

15.—LONG SERVICE LEAVE

The Employee may apply to take a complete entitlement of long service leave on full pay or half pay, or to take the leave in not more than six separate periods, subject to the following:

(1) If the Employee's long service leave falls due on or after 16 March 1988, then:

(a) the portion of long service leave being taken by the Employee on full or half pay, shall not be less than two weeks' entitlement;

(b) portions of long service leave of more than two weeks shall be taken by the Employee in multiples of weekly entitlements; and

(c) a minimum balance of long service leave of two weeks on full pay shall remain available.

(2) If the Employee's long service leave fell due prior to 16 March 1988, for which approval to defer the leave has been obtained, the portion of long service leave that can be taken on full or half pay shall be one complete month's entitlement or a multiple of complete months.

16.—CEREMONIAL/CULTURAL LEAVE

(1) An employee covered by this Agreement is entitled to use existing leave provisions as identified in sub clause (3) of this clause for tribal/ceremonial/cultural purposes.

(2) Such leave shall include leave to meet the employee's customs and traditional law and to participate in ceremonial/cultural activities.

(3) Each day or part thereof, taken in accordance with subclause (1), may be deducted from short leave entitlements, annual leave entitlements or flexi leave entitlements.

(4) Time off without pay may be granted by agreement between the employer and the employee for tribal/ceremonial/cultural purposes.

(5) Ceremonial/Cultural leave shall be available, but not limited to Aborigines and Torres Strait Islanders.

17.—FUTURE PRODUCTIVITY

The parties recognise that it is important to encourage future productivity improvements beyond those currently identified in this Agreement. Where such improvements are identified and implemented they will be considered as part of the next enterprise agreement.

18.—DISPUTE RESOLUTION PROCEDURE

In the event of any disputes, questions or difficulties between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply:

(1) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.

(2) If the matter is not resolved within 5 working days following the discussion in accordance with sub clause (1) of this clause the matter shall be referred by the CSA Representative to the Department of Land Administration's Manager, Human Resource Services for resolution.

(3) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the Manager, Human Resource Services it may be referred by either party to the Western Australian Industrial Relations Commission.

19.—SIGNATORIES

Signed on behalf of
the DEPARTMENT OF LAND
ADMINISTRATION

Allan Skinner
Chief Executive
Dated: 29-3-1996

Signed on behalf of
the CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA (INC)

D. Robinson
Secretary
Dated: 29-3-1996

SCHEDULE A—SALARIES

	Award Rate	Column A Annual Rate 4.7% (1.1.96)	Column B Annual Rate 1.3% (On Reg)	Column C Annual Rate 2% (1.7.96)	Column D Annual Rate 2% (1.1.97)
Level 1					
Under 17 years	10,873	11,384	11,532	11,763	11,998
17 years	12,707	13,304	13,477	13,747	14,022
18 years	14,822	15,519	15,721	16,035	16,356
19 years	17,157	17,963	18,197	18,561	18,932
20 years	19,267	20,173	20,435	20,844	21,261
21 years or 1st year of adult service	21,165	22,160	22,448	22,897	23,355
22 years or 2nd year of adult service	21,817	22,842	23,139	23,602	24,074
23 years or 3rd year of adult service	22,468	23,524	23,830	24,307	24,793
24 years or 4th year of adult service	23,115	24,201	24,516	25,006	25,506
25 years or 5th year of adult service	23,766	24,883	25,206	25,710	26,224
26 years or 6th year of ladult service	24,417	25,565	25,897	26,415	26,943
27 years or 7th year of adult service	25,166	26,349	26,692	27,226	27,771
28 years or 8th year of adult service	25,684	26,891	27,241	27,786	28,342
29 years or 9th year of adult service	26,450	27,693	28,053	28,614	29,186
Level 2					
1st year	27,367	28,653	29,025	29,606	30,198
2nd year	28,070	29,389	29,771	30,366	30,973
3rd year	28,809	30,163	30,555	31,166	31,789
4th year	29,590	30,981	31,384	32,012	32,652
5th year	30,407	31,836	32,250	32,895	33,553
Level 3					
1st year	31,530	33,012	33,441	34,110	34,792
2nd year	32,405	33,928	34,369	35,056	35,757
3rd year	33,307	34,872	35,325	36,031	36,752
4th year	34,233	35,842	36,308	37,034	37,775
Level 4					
1st year	35,503	37,172	37,655	38,408	39,176
2nd year	36,498	38,213	38,710	39,484	40,274
3rd year	37,522	39,286	39,797	40,593	41,405
Level 2/4					
1st year	27,367	28,653	29,025	29,606	30,198
2nd year	28,809	30,163	30,555	31,166	31,789
3rd year	30,407	31,836	32,250	32,895	33,553
4th year	32,405	33,928	34,369	35,056	35,757
5th year	35,503	37,172	37,655	38,408	39,176
6th year	37,522	39,286	39,797	40,593	41,405
Level 5					
1st year	39,494	41,350	41,888	42,726	43,581
2nd year	40,827	42,746	43,302	44,168	45,051
3rd year	42,212	44,196	44,771	45,666	46,579
4th year	43,649	45,701	46,295	47,221	48,165
Level 6					
1st year	45,960	48,120	48,746	49,721	50,715
2nd year	47,531	49,765	50,412	51,420	52,448
3rd year	49,157	51,467	52,136	53,179	54,243
4th year	50,893	53,285	53,978	55,058	56,159
Level 7					
1st year	53,555	56,072	56,801	57,937	59,096
2nd year	55,397	58,001	58,755	59,930	61,129
3rd year	57,401	60,099	60,880	62,098	63,340
Level 8					
1st year	60,658	63,509	64,335	65,622	66,934
2nd year	62,991	65,952	66,809	68,145	69,508
3rd year	65,884	68,981	69,878	71,276	72,702
Level 9					
1st year	69,497	72,763	73,709	75,183	76,687
2nd year	71,938	75,319	76,298	77,824	79,380
3rd year	74,722	78,234	79,251	80,836	82,453
Class 1	78,932	82,642	83,716	85,390	87,098
Class 2	83,142	87,050	88,182	89,946	91,745
Class 3	87,350	91,455	92,644	94,497	96,387
Class 4	91,560	95,863	97,109	99,051	101,032

SCHEDULE B—1995 PRODUCTIVITY IMPROVEMENT PLAN

1. OUR AIM

The aim of the Department of Land Administration is to be a dynamic customer focused organisation delivering quality land administration and information products and services through dedicated professional people.

The Department has embarked on a program of continuous improvement and the Productivity Improvement Plan is one of a number of key strategies in progress to achieve this aim.

2. OBJECTIVES

Through a program of continuous improvement:

(i) satisfy our customers needs by delivering quality service in the most cost effective way; and

(ii) through improved productivity provide Government and employees a share in the monetary gains.

3. CUSTOMER FOCUS

The Productivity Improvement Plan will focus on customer service and reduced labour costs per unit of output.

The major services provided by the Department are:

(i) The registration of land dealings;

(ii) Development and management of Crown Land; and

(iii) The supply of land information.

All of these services are essential to the financial and economic management of the State and are key to the growth initiatives of Government.

To improve the delivery of these important services is key to the Department achieving the targets set in the productivity improvement plan. Details of the services and the improvements to be achieved are outlined as follows.

4. SERVICE IMPROVEMENTS

4.1 Registration of Property Dealings

Objective: To improve by 15% the service delivery time required to register a property transaction.

This improvement will enable the Unit cost of labour applied to the processing of each property transaction registered under the Transfer of Land Act to be reduced. The increased productivity to be achieved will be applied to meeting increased revenue earning work loads. These increased work loads correspond to the economic growth of the State.

Benefits to clients:

- Faster transacting of property dealings.
- Reduction in labour costs for processing property transactions.
- Reduced costs to home buyers required to meet bridging finance payments.

Performance Indicator:

- Average time to process a property transaction to reduce from 7 days to 6 days.

The performance indicator is based on an average of 1300 transactions processed per day.

4.2 New Title Production

Objective: To improve by 17% the service delivery time required to produce a new land title.

This improvement will enable the unit cost of labour applied to the production of each new freehold land title transaction to be reduced. The increased productivity achieved will be applied to cover expected increases in business levels.

Benefits to clients:

- Land Developers will be able to transact with owners and builders earlier.
- Reduced holding costs for land developers which could be passed on to buyers.
- Reduction in labour costs for new title production.
- Improved productivity through reduced labour costs.

Performance Indicator:

- Average time to produce a new title for large land developments (land parcels of 10 or more lots) will not exceed 5 days.

The performance indicator is based on new titles produced averaging 120 per day.

4.3 Title Searching

Objective: To improve by 15% the service delivery time for title search requests.

Through improved procedures and better work scheduling by staff an average reduction of 15% in the delivery time for title searches will be achieved.

Benefits to clients:

- Faster and more reliable response to major customer search requests.
- Reduction in labour costs for title searching.

Performance Indicators:

- Title search requests using the dial up service will be delivered within 25 minutes.
- Title searches requested by conventional fax service will be delivered within 3.25 hours.

These performance indicators are based on search requests averaging 3000 per day.

4.4 Registration Quality

Objective: To improve by 7% the accuracy in processing property transactions.

In the State of Western Australia a Government guaranteed Certificate of Title is issued. The rate at which human error is made in the complex process of land transaction processing has therefore always been very closely monitored.

The cost through successful claims lodged against the Titles Assurance Fund for errors made has always been of concern. This is best highlighted by considering the risk when an average of $122m in land transactions are processed each day by the Department

The accuracy rate in processing land transactions will be improved through increased training, supervision and better quality control procedures designed and implemented by staff.

The improvement in error detection will reduce the State risk of successful claims against the Assurance Fund. The improvements to be implemented will be achieved within existing resources.

Benefits to clients:

- More accurate land transaction processing providing a better quality customer service.
- Reduce the State risk of claims against the Assurance Fund.

Performance Indicator:

- The rate of error which currently stands at 0.14% will be reduced to 0.13%.

4.5 Cadastral Map Production and Maintenance

Objective: To improve the currency of mapping products and reduce costs.

The recasting of resources and streamlining of processes will enable a reduction in the labour costs of map production and maintenance.

Benefits to clients:

- Mapping products will contain more current information.
- Public plan production times will be reduced by 14%.
- Reduced overall costs of map production.

Performance Indicators:

- Map production labour costs to be reduced by 10 FTEs with a salary value of $275,000.
- The mapping maintenance cycle will be reduced from an average of 14 days to an average of 12 days.

4.6 Provision of cadastral data

Objective: To improve by 40% the spatial data update cycle.

The development and introduction of a lodged layer in the Spatial Cadastral Data Base (SCDB) will make data available to clients at an earlier stage in the land development process. This facility will be designed and installed by staff and maintained within existing resources along with all other operating requirements.

Benefits to clients:

- The currency of mapping information will be greatly enhanced for clients.
- The time required to update the SCDB will be reduced.
- Savings in search costs by clients across Government will be achieved.
- A substantial reduction in survey control costs will be achieved.
- Service standards will be improved.

Performance Indicators:

- The SCDB maintenance cycle will be reduced from an average of a 10 week cycle to an average 6 week cycle for the State.
- The successful introduction of a lodged layer facility for client access.

4.7 Air Photo Service

Objective: To increase revenue and better service client demand within existing resources

Improved productivity and customer satisfaction in the delivery of air photo products will be achieved through better quality index information which will be designed and made available in regions and customer premises.

These improvements will be achieved through the revision and streamlining of current ordering and supply procedures. Also by improving access to product information greater client satisfaction and product demand will result.

Benefits to clients:

- Improved procedures will enable the estimated 10% annual increase in demand to be met within existing resource levels.
- Reduced costs of air photo print sets provided to Government clients.
- Improved service through locally available low cost browse set of air photography.
- An increase in revenue of 15% will be generated for no additional cost to present outlay.

Performance Indicators:

- Meet the expected increase in demand for service of 10% within existing resources.
- Improve client service delivery times by reducing average turnaround times for orders from 10 to 9 working days.

4.8 Improved Bushfire Detection Service

Objective: Improve Bushfire detection rate and reduce fire surveillance costs to Government.

Remote Sensing Imagery for Bushfire detection across the State is presently provided on a 1-2 weekly request cycle. The present service is inadequate for early detection of all Bushfires and requires expensive air craft surveillance by Government agencies to compliment the imagery service.

The application of staff skills and ingenuity and by better using existing resources a greatly improved Bushfire detection service will be provided at no extra cost.

The improved service will provide critical information for Bushfire detection to be provided direct to district fire offices on a daily basis. Through this improved process further and more precise interpretation of fire risk and detection using local knowledge will be achieved.

The Bush Fires Board have recognised that the use of tools such as satellite imagery is essential if the State is to prevent substantial life and property loss.

Benefits to clients:

- More current Bushfire detection opportunities across the State to provide earlier corrective action by local fire units.
- Reduced Bushfire surveillance costs resulting from regular provision of imagery to regional offices thereby reducing the frequency of aircraft surveillance.
- Overall reduction in the cost of Bushfire detection for Government.

Performance Indicators:

- The present imagery cycle of 1-2 weeks will be reduced to a daily cycle.
- Bushfire detection information being received directly in district fire offices daily.

4.9 Production of Crown Grants

Objective: Improve by 30% the time required to produce Crown Grants.

Through a process of change in current procedures and working arrangements significant improvements will be achieved in the time required to issue Grants for Crown land.

- Reduce the time taken to issue Crown Grants by 30%.
- Quicker issue of Crown Grants contributes to improved efficiency of the real estate and finance industry.

Performance Indicator:

- The average time to issue a Crown Grant to reduce from 13 weeks to 8 weeks.

The performance indicator is based on a total 1000 Crown Grants issued per annum.

5. APPLICATION OF IMPROVED PRODUCTIVITY

The improved productivity achieved through the implementation of the plan will provide the Department not only with

the opportunity to reduce resource levels overall but provide the capacity to meet the increasing business pressures and new initiatives of Government.

Activities requiring immediate resourcing by the Department include:

(i) Expanding Land Registry

The Department of Land Administration is required to register all new land subdivisions created each year. In 1993/94 a total of 28,000 new lots were created and were added to the ever expanding registry of land in Western Australia.

The registry will continue to be increased over the life of the 1995 Productivity Improvement Plan without the need for additional resources.

Resource capacity available though the successful achievement of the Productivity Improvement Plan will be applied to service this increased work load related to the higher than normal new land subdivisions created.

(ii) Government Property Register

An important initiative of Government was the establishment of a Government Property Register. This initiative has provided the first available record of Government owned land and property assets and their respective value which totals $13bn.

The Government Property Register provides detailed information of all land and property owned by Government agencies in Western Australia. The Register was recently developed and implemented by DOLA in conjunction with the Office of Government Accommodation and the Valuer General's Office.

The Department of Land Administration will provide the essential system support service to agencies as a primary contact to ensure the continued maintenance of the register.

Maintaining the support service will be an ongoing activity requiring full time commitment of DOLA resources. Again resource capacity available through the successful achievement of the Productivity Improvement Plan will be applied to meet this increased workload.

(iii) Native Title

A significant resource will be necessary to service the Native Title process irrespective of the outcome of the State's High Court challenge. The workload associated with Native Title claims and historical land tenure searching has already impacted upon the Department of Land Administration resources.

To provide the necessary support to the State in the extraction and interpretation of historical land tenure records is already requiring significant resources.

It is estimated that 10 to 12 FTE will need to be applied by the Department to the activities directly related to Native Title issues on an ongoing basis.

The resources necessary to be applied to Native Title issues will be met from the resource capacity available through the successful implementation of the Productivity Improvement Plan.

SCHEDULE C—1996 PRODUCTIVITY IMPROVEMENT PLAN

PART 1

Achievement of the following productivity improvements will result in a salary increase of 2% on 1 July 1996.

1.1 Performance Audit

Objectives: To expand audit coverage from financial auditing to include EDP and Operational auditing and increase the number of audits conducted in 1994/95 by 20% in 1995/96.

The Performance Audit Branch will improve productivity in 1995/96 by expanding audit coverage from financial auditing to include EDP auditing and operational auditing. This productivity increase will be achieved by improved audit planning processes and from more effective use of existing resources.

Benefits to Clients:

- Provide a more comprehensive audit service to assist DOLA to achieve its objectives.
- Improved management systems through increased scope of audits.
- More effective audit outcomes.

Performance Indicators:

- 33% reduction in approved FTE level (from 6 to 4) compared with 1994/95.
- A 20% increase in the number of Performance Audits conducted compared with 1994/95.

1.2 Quality Customer Service Program (QCSP)

Objectives: To improve service delivery, productivity and customer satisfaction by conducting a comprehensive training program to align staff with DOLA's vision, values and Customer Service Charter.

QCSP is a Quality Customer Service Training Program of 12 half days over 2 years for all staff in order to provide them with Customer service, team work and other skills that will allow them to improve service delivery and the associated systems and processes. A QCSP Service Leadership Program has also been established to assist managers and supervisors to enhance their skills and competencies to effectively manage within the new environment.

These Programs are being conducted by staff within DOLA and without the use of additional resources. The impact of having all staff attend the 12 half day sessions is effectively to reduce the number of staff in operating areas by 9 FTEs for the 2 years of the Program. This impact is being absorbed within the Department's resource allocation.

Benefits to Clients:

- Improved customer service.
- Streamlined processes to provide more responsive service.
- Maximising the return on DOLA's investment in technology and people.

Performance Indicators:

- The resources required to develop and implement the Quality Customer Service Program across DOLA will be met from within the Department's operating base.
- Greater than 60% of all DOLA staff having attended the Quality Customer Service Program.
- Reports on improvements to customer service and changes to work practices will be prepared quarterly.

1.3 Supply Service

Objectives: To provide a more efficient supply service to DOLA programs.

The opportunity to re-examine the provision of stationery supplies to reduce existing operating overheads is being pursued.

The main areas being examined are the need to retain and operate a stationery store and for DOLA Employees to be assigned to the management of this activity.

Benefits to Clients:

- More direct provision of supplies.
- Greater flexibility and control of supply requirements.

Performance Indicators:

- Reduce existing operating overheads.
- Improve service delivery.

1.4 Stopped Documents

Objective: To reduce by 10% the number of registration documents held in stopped documents per week.

This improvement will enable the unit cost of labour applied to the processing of each stopped document requisition to be utilised in performing other essential duties. Labour will be redirected to increase staff response time to customer telephone enquiries and counter service.

Work practices in the Registration Branch will be modified to allow staff to rectify simple errors by direct telephone or fax contact with the lodging client

Benefits to Clients:

- Faster processing of customers documents that are in Stopped Documents Section but not subject to requisition.
- Customer telephone enquiries will be attended to more expediently.
- Customer waiting time on counters will be reduced.
- Documents that have been requested to be withdrawn from registrations will be processed more quickly.
- Stopped document requisition notices sent and received by customers on the same day.

Performance Indicator:

- The number of registration documents held in the Stopped Document Section to reduce from 1350 to 1210 per week.

The performance indicator is based on an average of 1,300 transactions per day and excludes documents subject to legal adjudication or DOLA internal requisition and those for which a statutory extension of the time limit has been granted by the Registrar of Titles.

1.5 Production of Crown Grants

Objective: Reduce by 6% the time required to produce Crown Grants.

Through a continued process of change in procedures and working arrangements further improvements will be achieved in the time required to issue Grants for Crown land.

Benefits to Clients:

- Reduce the time taken to issue Crown Grants by 6%.
- Quicker issue of Crown Grants contributes to improved efficiency of the real estate and finance industry.

Performance Indicator:

- The average time to issue a Crown Grant to reduce from 8 weeks to 7.5 weeks.

The performance indicator is based on a total 800 Crown Grants issued per annum.

PART 2

Achievement of the following productivity improvements will result in a salary increase of 2% on 1 January 1997.

2.1 Registration of Property Dealings

Objective: To maintain the service delivery time required to register a property transaction while reducing the resources applied to this activity.

This will enable the Unit cost of labour applied to the processing of each property transaction registered under the Transfer of Land Act to be reduced. The increased productivity to be achieved will be applied to meeting increased demands in other areas of the Land Registration Program. These demands correspond to the economic growth of the State.

Benefits to clients:

- Faster transacting of property dealings.
- Reduction in labour costs for processing property transactions.
- Reduced costs to those property buyers who are required to meet bridging finance payments.

Performance Indicator:

- Average time to process a property transaction to be maintained at 5.5 days with a resource reduction of 3 FTEs to be available for reallocation within the Land Registration Program.

The performance indicator is based on an average of 1300 transactions processed per day.

2.2 Freehold Plan Registration

Objective: To reduce by 10% the processing time for registration of a freehold survey plan/diagram.

This improvement will enable the unit cost of labour applied to the processing of each Freehold survey plan to be reduced. The productivity achieved will be applied to cover expected increases in business levels and new initiatives brought about by legislative changes.

Benefits to Clients:

- Land developers will be able to transact with owners and builders earlier.
- Reduced holding costs for land developers which could be passed on to buyers.
- Reduction in labour costs for Freehold plan processing.
- Improved productivity through reduced labour costs.

Performance Indicator:

- Average processing time for registration of a freehold survey plan/diagram will be reduced from an average of 16.5 working days to an average of 15.5 working days.

The performance indicator is based on an average of 200 plans/diagrams per month. The proposed Survey Strata plans and plans or diagrams stopped for reasons beyond departmental control are not included in the performance indicator.

2.3 Stopped Documents

Objective: To reduce by 10% the number of registration documents held in stopped documents per week.

This improvement will enable the unit cost of labour applied to the processing of each stopped document requisition to be utilised in performing other essential duties. Labour will be redirected to increase staff response time to customer telephone enquiries and counter service.

Work practices in the Registration Branch will be modified to allow staff to rectify simple errors by direct telephone or fax contact with the lodging client

Benefits to Clients:

- Faster processing of customers documents that are in Stopped Documents Section but not subject to requisition.
- Customer telephone enquiries will be attended to more expediently.
- Customer waiting time on counters will be reduced.
- Documents that have been requested to be withdrawn from registrations will be processed more quickly.
- Stopped document requisition notices sent and received by customers on the same day.

Performance Indicator:

- The number of registration documents held in the Stopped Document Section to reduce from 1210 to 1080 per week.

The performance indicator is based on an average of 1,300 transactions per day and excludes documents subject to legal adjudication or DOLA internal requisition and those for which a statutory extension of the time limit has been granted by the Registrar of Titles.

2.4 Production of Crown Grants

Objective: Reduce by 6% the time required to produce Crown Grants.

Through a continued process of change in procedures and working arrangements further improvements will be achieved in the time required to issue Grants for Crown land.

Benefits to Clients:

- Reduce the time taken to issue Crown Grants by 6%.
- Quicker issue of Crown Grants contributes to improved efficiency of the real estate and finance industry.

Performance Indicator:

- The average time to issue a Crown Grant to reduce from 7.5 weeks to 7 weeks.

The performance indicator is based on a total 800 Crown Grants issued per annum.

2.5 StreetSmart Perth Street Directory

Objective: To reduce costs in the production of the StreetSmart Perth Street Directory.

Changes in technology have allowed competitive tender for production of the StreetSmart Perth Street Directory will result in reduced direct costs.

Performance Indicator:

- Reduce the production costs for the StreetSmart Perth Street Directory by $200,000.

2.6 Small Scale Mapping

Objective: Reduce by 25% the costs of survey control for small scale map production.

The installation of a Global Positioning System (GPS) in aircraft will enable the control requirements for small scale mapping to be reduced, resulting in direct cost savings.

Benefits to Clients:

- Improved response time to client requests.

Performance Indicator:

- Reduce the survey control costs for small scale maps by 25%.

DEPARTMENT OF LOCAL GOVERNMENT ENTERPRISE BARGAINING AGREEMENT No. PSG AG 5 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Local Government

and

The Civil Service Association of Western Australian Incorporated.

No. PSG AG 5 of 1996.

Department of Local Government Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER A.R. BEECH.

30 May 1996.

Order.

HAVING heard Ms G. Marton on behalf of the Applicant and Mr K. Ross 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 Department of Local Government Enterprise Bargaining Agreement 1996 be registered in accordance with the following Schedule commencing on and from the 22nd day of May 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Department of Local Government Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Employees Covered
5. Parties Bound
6. Relationship to Parent Award
7. Duration of Agreement
8. Purpose of this Agreement
9. Single Bargaining Unit
10. Dispute Resolution Procedures
11. Short Leave
12. Bereavement Leave
13. Leave in Lieu of Public Service Holidays
14. Leave Loading
15. Excess Travel Time
16. Flexible Working Arrangements
17. Overtime
18. Flexitime Hours
19. Higher Duties Allowance
20. Weekend Attendance at Conferences and Seminars
21. Unpaid Hours
22. Hours
23. Enterprise Bargaining Agreement Payments
24. No Further Claims
25. Signature of Parties to the Agreement

Schedule A—Salaries

3.—SCOPE

This agreement shall apply throughout the State of Western Australia to all persons employed by the Department of Local Government who are members or eligible to be members of The Civil Service Association of Western Australia (Incorporated).

4.—EMPLOYEES COVERED

(1) This agreement shall apply to all employees covered by Clause 3.—Scope.

(2) Upon registration, the number of employees covered by this agreement is estimated at 55.

5.—PARTIES BOUND

(1) The Employer

The Chief Executive Officer of the Department of Local Government.

(2) The Union

The Civil Service Association of Western Australia Incorporated.

(3) The parties bound by this agreement will oppose any subsequent application by any other body or organisation to be joined to this agreement.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read wholly in conjunction with the Public Service Award 1992 which applies to the parties bound by this document. In the case of any inconsistencies this agreement shall have precedence to the extent of the inconsistencies.

7.—DURATION OF AGREEMENT

(1) This agreement shall operate from 22nd May 1996 and shall remain in force for a period of twelve months. The salary increases specified in Schedule A—Salaries are payable from January 3, 1996.

(2) Each party to this agreement accepts that its conditions shall be binding for its term.

(3) The parties will review this agreement six months prior to the date of expiration and begin negotiations on its renewal or replacement.

(4) If this agreement is not renewed or replaced on expiry it will continue in force until renewed, replaced, cancelled or where either party withdraws from the agreement in accordance with the Industrial Relations Act 1979.

8.—PURPOSE OF THIS AGREEMENT

The purpose of this agreement is to achieve ongoing improvements in productivity and enhance the performance of the Department and allow the benefits from those improvements to be shared by the Department, its employees and the State Government.

9.—SINGLE BARGAINING UNIT

For the purpose of negotiating this and future enterprise bargaining agreements a single bargaining unit has been formed as a representative of all parties. The single bargaining unit will continue to monitor the implementation of the agreement and be responsible for its renewal or replacement.

10.—DISPUTE RESOLUTION PROCEDURES

(1) Individual employee grievances which may arise from time to time shall be dealt with in accordance with the Department of Local Government grievance procedures and shall not form part of this agreement's dispute resolution process.

(2) Where any questions, disputes or difficulties arise between the parties about the meaning or effect of this agree-

ment the parties will consult to reach a settlement in accordance with the following procedure:

Stage 1—The matter shall be discussed between the employee and the immediate supervisor. The matter need not be dealt with in writing and shall be dealt with on an informal basis. Employees may seek advice from their union or other persons. If unresolved within a time frame of three working days either party may refer the matter to the appropriate manager (or director) and shall advise the other party(s) accordingly.

Stage 2—The manager (or director) shall attempt to resolve the matter with the employee and/or other relevant parties as soon as practicable but no later than seven days after the matter is referred to him/her.

Stage 3—If unresolved either party may refer the matter in writing to the Chief Executive Officer (CEO). The CEO or senior officer nominated by the CEO shall attempt to resolve the matter within ten working days of the date the matter was referred to him/her.

Stage 4—If the parties are still unable to resolve the issue(s) in dispute either party is free to refer any industrial matter to the Western Australian Industrial Relations Commission as appropriate. In keeping with the spirit of this procedure, this would be after the process outlined had been exhausted.

11.—SHORT LEAVE

Short leave, as prescribed by Clause 26.—Short Leave of the Public Service Award 1992, shall not apply for the duration of this agreement.

12.—BEREAVEMENT LEAVE

(1) Subject to subclause (2) of this clause, on the death of:

(a) the spouse or de facto spouse of an employee;

(b) the child or step-child of an employee;

(c) the parent or step-parent of an employee; or

(d) any other person who, immediately before that person's death, lived with the employee as a member of the employee's family,

the employee is entitled to be paid bereavement leave of up to two days.

(2) The two days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

(4) An employee who claims to be entitled to paid leave under subclause (1) of this clause is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to:

(a) the death that is the subject of the leave sought; and

(b) the relationship of the employee to the deceased person.

13.—LEAVE IN LIEU OF PUBLIC SERVICE HOLIDAYS

One day's leave in lieu to be taken in substitution of two ex-Public Service holidays at New Year and Easter.

14.—LEAVE LOADING

(1) Leave loading shall be paid in the year it falls due subject to satisfactory performance.

(2) Leave loading payable on leave accrued prior to January 3, 1996 will be paid in 1996 as soon as practicable after the 22nd May 1996. Leave loading payable on leave accrued between January 3, 1996 and December 31, 1996 for leave not taken in that period will be paid on the first pay period in December 1996.

(3) Leave loading payable on accrued leave will be paid at the officer's substantive rate of pay.

(4) Supervisors, when approving applications for annual leave, are required to certify that the officer's performance has been satisfactory and this must be reflected in the officer's most current Performance Development Programme (PDP) report.

(5) Where an officer' performance is assessed as being sub-standard under the existing PDP, leave loading will be withheld until such time as the officer's performance is satisfactory.

(6) The officer's supervisor will determine the period of time over which the officer will be assessed for sufficient evidence of a return to satisfactory performance. The procedure adopted must comply with the procedures set out in the Management of Employee Sub-Standard Performance Manual.

(7) Where an officer has had leave loading withheld due to sub-standard performance and subsequently receives a satisfactory performance report, that leave loading will be paid at the rate of pay applicable at the date the loading was originally due.

15.—EXCESS TRAVEL TIME

The excess travel time contained in subclause (7) of Clause 18.—Overtime Allowance of the Public Service Award 1992 will no longer apply.

16.—FLEXIBLE WORKING ARRANGEMENTS

Flexible working arrangements will apply within the concept of employees being required to work, on average, 152 hours in a four week period. Employees will not be required to work in excess of twelve hours in one day without agreement from the employee, nor for more than five hours without a meal break. No employee shall be required to recommence work until at leave ten hours have elapsed from the time the previous period of work ceased.

17.—OVERTIME

Overtime provisions shall only apply to time in excess of 152 hours in any four week period and at a maximum time and a half penalty rate for weekdays, weekends and public holidays.

18.—FLEXITIME HOURS

The maximum amount of hours that can be carried over from one settlement period to another for those employees working flexible hours is fifteen.

19.—HIGHER DUTIES ALLOWANCE

(1) An employee will only be paid higher duties allowance when that employee acts in a position which is classified higher than their own for a period of ten working days or more.

(2) Where a period of acting higher duties equals or exceeds ten working days the higher duties allowance will be paid for the entire period of those acting higher duties.

(3) Acting higher duties for lesser periods will, on application from the employee, be recorded on the official staff records as evidence for promotional or other purposes.

20.—WEEKEND ATTENDANCE AT CONFERENCES AND SEMINARS

Attendance at local government conferences and training seminars held on weekends will not be subject to overtime provisions. The hours so worked shall be regarded as normal hours as provided for in Clause 16.—Flexible Working Arrangements.

21.—UNPAID HOURS

In order to implement the new Local Government Act by July 1, 1996, staff involved in the implementation agree to continue working existing additional hours until June 30, 1996 in order to achieve the implementation date.

22.—HOURS

Employees are required to work 7 hours 36 minutes per day which equates to a 38 hour week.

23.—ENTERPRISE BARGAINING AGREEMENT PAYMENTS

(1) This agreement provides for a payment of 6% over and above the existing award rates as at January 3, 1996 and the payment of a further 2% as at July 1, 1996.

(2) The award rates as at January 3, 1996 and payments under this agreement are set out in Schedule A—Salaries.

(3) The employees agree to support changes occurring within the workplace as a result of reforms arising from the introduction of the new Local Government Act.

24.—NO FURTHER CLAIMS

The parties undertake that, for the duration of this agreement, there shall be no further salary or wage increases sought

or granted except as provided for under the terms of this agreement, with the exception of reclassifications and temporary special allowances.

25.—SIGNATURE OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the parties to the agreement.

Dave Robinson
State Secretary
The Civil Service Association of Western Australia Incorporated
2/4/1996

John Anthony Lynch
Executive Director
Department of Local Government
2/4/1996

SCHEDULE A—SALARIES

LEVEL	AWARD RATE $	PAYABLE 3.1.96 to 30.6.96 $	PAYABLE 1.7.96 to 31.3.97 $
LEVEL 1			
Under 17 years	10,873	11,525	11,756
17 years	12,707	13,469	13,739
18 years	14,822	15,711	16,026
19 years	17,157	18,186	18,550
20 years	19,267	20,423	20,831
21 or 1st year	21,165	22,435	22,884
22 or 2nd year	21,817	23,126	23,589
23 or 3rd year	22,468	23,816	24,292
24 or 4th year	23,115	24,502	24,992
25 or 5th year	23,766	25,192	25,696
26 or 6th year	24,417	25,882	26,400
27 or 7th year	25,166	26,676	27,209
28 or 8th year	25,684	27,225	27,770
29 or 9th year	26,450	28,037	28,598
LEVEL 2			
1st year	27,367	29,009	29,589
2nd year	28,070	29,754	30,349
3rd year	28,809	30,538	31,148
4th year	29,590	31,365	31,993
5th year	30,407	32,231	32,876
LEVEL 3			
1st year	31,530	33,422	34,090
2nd year	32,405	34,349	35,036
3rd year	33,307	35,305	36,012
4th year	34,233	36,287	37,013
LEVEL 4			
1st year	35,503	37,633	38,386
2nd year	36,498	38,688	39,462
3rd year	37,522	39,773	40,569
LEVEL 5			
1st year	39,494	41,864	42,701
2nd year	40,827	43,277	44,142
3rd year	42,212	44,745	45,640
4th year	43,649	46,268	47,193
LEVEL 6			
1st year	45,960	48,718	49,692
2nd year	47,531	50,383	51,391
3rd year	49,157	52,106	53,149
4th year	50,893	53,947	55,026
LEVEL 7			
1st year	53,555	56,768	57,904
2nd year	55,397	58,721	59,895
3rd year	57,401	60,845	62,062
LEVEL 8			
1st year	60,658	64,297	65,583
2nd year	62,991	66,770	68,106
3rd year	65,884	69,837	71,234
LEVEL 9			
1st year	69,497	73,667	75,140
2nd year	71,938	76,254	77,779
3rd year	74,722	79,205	80,789

DEPARTMENT OF THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION, ENTERPRISE BARGAINING AGREEMENT 1996
No. PSA AG 128 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australian Branch
and
Department of the Registrar.
No. PSA AG 128 of 1996.

Department of the Registrar, Western Australian Industrial Relations Commission Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

5 June 1996.

Order.

HAVING heard Mr D. Newman on behalf of the Applicant and Mr P. Wishart and with him Mr R. Cantrell on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Agreement known as the Department of the Registrar, Western Australian Industrial Relations Commission Enterprise Bargaining Agreement 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 31 May 1996.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Department of the Registrar, Western Australian Industrial Relations Commission, Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Definitions
4. Parties to the Agreement
5. Scope of Agreement
6. Date and Duration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Audit of 4% 2nd Tier and 1989 Structural Efficiency Principles
10. Objectives
11. Salary Rates
12. Parental Leave
13. Family Carer's Leave
14. Bereavement Leave
15. Sick Leave
16. Public Holidays
17. Family/Ceremonial/Cultural Leave
18. Annual Leave Travel Concessions
19. Annual Leave Loading
20. Annual Leave For Chambers Staff
21 Meal Allowance
22. Notification of Change
23. Dispute Resolution Procedure
24. No Further Claims
25. Potential Number of Employees Under this Agreement
26. Signatures of Parties to the Agreement

Appendix A — Corporate Objectives, Strategies and Outcomes
Appendix B — Salary Rates by Classification Level
Appendix C — Performance Targets and Assessment For Salary Increases

3.—DEFINITIONS

In this Agreement the following expressions shall have the following meanings—

- "Employer" means the Chief Executive Officer, Department of the Registrar, Western Australian Industrial Relations Commission.
- "Employees" means those persons employed under the provisions of Part III of the Public Sector Management Act 1994.
- "Department" means Department of the Registrar, Western Australian Industrial Relations Commission.
- "Agreement" means the Department of the Registrar, W.A. Industrial Relations Commission Enterprise Agreement of 1996.
- "Union" means the Association listed as a party to this Agreement in Clause 4 of this Agreement.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the Chief Executive Officer, Department of the Registrar, Western Australian Industrial Relations Commission (employing authority) and the Civil Service Association of Western Australia Incorporated, a registered organisation of employees.

5.—SCOPE OF AGREEMENT

This Agreement shall apply to all employees employed under the provision of Part III of the Public Sector Management Act 1994, who are employed by the Chief Executive Officer (employing authority) within the scope of the Public Service Award 1992.

6.—DATE AND DURATION OF AGREEMENT

(1) This Agreement shall operate from the beginning of the first pay period commencing on or after the date on which this Agreement is registered in the Western Australian Industrial Relations Commission and shall apply until the 30th June 1997.

(2) The parties to this Agreement agree to re-open negotiations six months prior to the expiry of the period of this agreement with the view of establishing a new Enterprise Agreement.

7.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted in conjunction with the Public Service Award 1992 which applies to the parties bound to this Agreement.

(2) Where there is any inconsistency between this Agreement and the Award this Agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

(1) The parties to this Agreement have formed a Single Bargaining Unit (SBU).

(2) The SBU which comprises representatives from the Department and the Civil Service Association of Western Australia (CSA) has conducted negotiations and reached full agreement with the employer represented by this Agreement.

9.—AUDIT OF 4% 2ND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLES

The parties agree that matters arising from previous Industrial Agreements and Award changes emanating from the "Restructuring and Efficiency Principle" of 1987, the Structural Efficiency Principles of the 1988 and 1989 of the National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of Structural Efficiency initiatives since the advent of Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

10.—OBJECTIVES

(1) The parties agree that the objectives of this Agreement are to—

(a) improve productivity, effectiveness and efficiency;

(b) ensure that gains achieved through this Agreement from improved productivity and changes to workplace culture are shared by the employees, employer and the clients and the government on behalf of the community;

(c) ensure that the Department operates in a manner consistent with the principles outlined in section 7 of the Public Sector Management Act;

(d) meet employment security through the improvement of efficiency and effectiveness of Departmental services;

(e) develop and pursue change on a co-operative basis.

(2) By reaching this Agreement the parties have recognised that the Employer and the Employees will support the organisational mission of the Department by—

(a) being sensitive and responsive to the needs of customers;

(b) continuously improving practices in all areas of service;

(c) providing services on a value for money basis in line with community expectations;

(d) implementing human resource practices to enable the achievement of corporate objectives;

(3) Further, the parties to this Agreement recognise the priorities and outcomes attached as Appendix A are an essential element in obtaining future productivity based pay rises and will co-operatively participate in the development and implementation of strategies to meet the stated outcomes.

(4) Initiatives that may arise out of this Agreement are but not limited to—

(a) an adoption of an organisational culture where the services delivered by the Department will be customer driven; this will include an increase in the access times for the customers of the Department to lodge and have documents processed;

(b) improvement of participative practices within the agency;

(c) development and implementation of technology tools, new management systems and improved work management, reduced operating costs, enhanced safety and improved productivity and efficiency in the Department;

(d) the training and development of employees in the use of technology including keyboarding and software application user skills. The acquisition of these skills will enable the Department to review structure on the basis of improved individual keyboard proficiencies, general efficiency and effectiveness;

(e) implementation of a process of continuous improvement and quality management within the Department;

(f) the Department and its employees being committed to the effective implementation of Occupational Health, Safety and Welfare and the reduction of sick leave.

(5) The performance targets and outcomes at Appendix C link the objectives and initiatives of this Agreement to the payment of the second and third pay rises.

(6) The Department is seeking workplace reform or change. This change will be consistent with the corporate objectives in order to achieve the outcomes required.

(7) This Agreement recognises that workplace change will be done in consultation with employees with the objective of reaching agreement as to the change and the change process.

(8) An integral part of workplace change will be the establishment of a program of reform. The stages of this program are—

(a) the establishment of consultative mechanisms, employee awareness sessions, training of consultative committees and further developing reform goals:

(b) development of a corporate vision for the Department integrating the strategic plan with any restructuring and redevelopment of key performance objectives for the Department in accordance with broad corporate goals;

(c) defining process steps at the Department and identifying other productivity barriers.

(d) sorting barriers into system and work organisation

categories, developing solutions to system barriers and making recommendations to Corporate Executive;

(e) identifying the cause of work organisation barriers and giving solutions to these;

(f) identifying current work practices and how these contribute to productivity barriers;

(g) identifying the skills required for any new jobs and the skills held by current job occupants;

(h) developing a skill based training structure establishment.

(9) As a complement to workplace reform the Department is committed to introducing a productivity measurement program which will—

(a) train employees on the job to develop measures to create an awareness of productivity within the Department and how this relates to their required outcomes;

(b) establishing the profile of existing performance from which to pay for improvement in productivity, and

(c) provide ongoing mechanisms for the monitoring, analysis and evaluation of changes introduced.

11.—SALARY RATES

(1) The salary rates prescribed in the Award are to be increased in the following manner—

(a) An increase of 4% from the first pay period on or after 27 February 1996.

(b) A second increase of 2% from the first pay period on or after 1 July 1996.

(c) A third increase of 1% from the first pay period on or after 1 January 1997.

(2) The salary increases outlined are in addition to the first and second arbitrated safety net adjustments, however, the third arbitrated safety net shall be absorbed into this Agreement.

(3) The effect of the salary rate increases are reflected by classification in Appendix B of this Agreement.

(4) Payment of the second and third salary increases is dependent on specific performance targets being met as outlined in Appendix C of this Agreement.

(5) Subject to subclause (4) if any of the performance targets outlined in Appendix C as being applicable to the payment of the second and third pay rise are not met then that pay rise shall be deferred in accordance with the assessment method outlined at Appendix C of this Agreement.

(6) Where a target specified in Appendix C of this Agreement as being applicable to the payment of a salary increase is unable to be met due to management or Government policy beyond the control of the parties it shall not affect the granting of salary increases under this Agreement.

(7) The parties agree that where deferral of a pay increase under this Agreement is contemplated under subclauses (8) or (9) they will meet to discuss issues which may be preventing employees from accessing such pay increases.

(8) Payment/Deferral of Second Salary Increase

(a) Where a deferral of the second pay increase occurs, a re-assessment of the relevant performance target(s) shall be made on October 1, 1996 and if the performance target(s) is/are judged to have been met the deferred pay rise shall be operative from that date.

(b) Should the reassessment indicate that the performance target(s) have still not been met then the second pay rise shall continue to be deferred and a further reassessment of the relevant performance target(s) made on January 1, 1997. If the performance target(s) is/are judged to have been met the deferred pay rise shall be operative from that date. Subject to subclause (9) the payment of the second pay rise in these circumstances shall not alter the operative date of the third pay increase.

(c) Should the reassessment on January 1, 1997 indicate that the performance target(s) have still not been met then the second pay rise shall be deferred subject to further reassessment on April 1, 1997. If the performance target(s) have not been met then the pay rise shall be deferred and dealt with as per subclause (10) of this Clause.

(9) Payment/Deferral of Third Pay Increase

(a) Where a deferral of the third pay increase occurs, a re-assessment of the relevant performance target(s) shall be made on April 1, 1997 and if the performance target(s) is/are judged to have been met the deferred pay rise shall be operative from that date.

(b) Should the reassessment indicate that the performance target(s) have still not been met then the third pay rise shall be dealt with as per subclause (10) of this Clause.

(10) Incorporation of Deferred Pay Rises Into Subsequent Agreement

Reassessment of the deferred pay rises will be made on June 30, 1997. Should this reassessment indicate that the performance target(s) have been met then the deferred pay rises shall be incorporated into any new Agreement and shall be paid from the operative date of the Agreement. If, however, the performance target(s) for any deferred pay rise is still not being met then the deferment shall continue but be subject to further reassessment each three months thereafter, notwithstanding that this will occur during the term of any new Agreement between the parties.

12.—PARENTAL LEAVE

(1) Definition

(a) "Employee" includes full time, part time, permanent and fixed term contract employees

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave

(2) Eligibility for Parental Leave

(a) An employee is entitled to a period of up to 52 weeks' unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse, one week's annual leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) An employee adopting a child under the age of five years shall be entitled to three weeks' parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

(d) An employee seeking to adopt a child shall be entitled to two days' unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) Subject to subclause (2)(b) of this clause, where both partners are employed by the Department the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive Officer.

(3) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave.

(b) An employee may extend the maximum period of parental leave with a period of accrued annual leave, accrued long service leave or leave without pay subject to the Chief Executive Officer's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

(d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medi-

cal procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) The employee shall give not less than four weeks' written notice to the Department of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) An employee proceeding on parental leave may elect to take a shorter period of leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks' written notice is provided.

(5) Transfer to a Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred internally to a safe position of the same classification until the commencement of parental leave.

(b) (i) Where the employer is unable to provide a safe job with the organisation, or modify the work to the extent required to provide safe employment, with the consent of the employee, and where practicable, the employee may be transferred to another agency until the commencement of parental leave.

(ii) Where an external transfer is arranged, the work undertaken by the employee shall be at the same classification and within the employee's competence.

(c) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary by a registered medical practitioner.

(6) Replacement Employee

Prior to engaging a replacement employee the Department shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to the Department not less than four weeks prior to the expiration of the period of parental leave;

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to subclause (5) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) In accordance with Clause 9.—"Part-Time Employment" of the Public Service Award 1992, an employee may apply to return to work on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis.

(d) For the purposes of this Agreement, 'part-time' is considered to be any hours less than 37.5 hours per week the rate of pay being proportionate to the time worked relative to full-time employment.

(e) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level within the employee's competency and skills.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental 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 under the relevant award or this agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the Public Service Award 1992.

13.—FAMILY CARERS LEAVE

(1) Employees covered by this Agreement may with the approval of the Chief Executive Officer use up to five days accrued sick leave in any calendar year in accordance with this clause to provide care for another person who is ill, subject to—

(a) the employee having available not less than ten days accrued or pro rata sick leave for their own use in that calendar year; and

(b) the employee being an employee with family responsibility; and

(c) the person concerned being either—

(i) a member of the employee's immediate family; or

(ii) a member of the employee's household.

(d) production of evidence satisfactory to the employer in proof of the illness of the other person in accordance with Clause 22 subclause 2 (a) of the parent award with the words "sick leave" substituted with the words "family carer's leave".

(e) the term "immediate family" includes:

(i) a partner (including a spouse or de facto spouse) of the employee. A partner means a person who lives with the first mentioned person on a bona fide domestic basis although not legally married to that person; and

(ii) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or partner of the employee.

(2) the employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

(3) The employer having regard to the need and nature of the care required may approve further periods of family carer's leave, utilising short leave, accrued annual leave or long service leave entitlements, as is necessary in the circumstances.

(4) An employee may elect with the consent of the Department to take unpaid leave, for the purposes of providing care to an immediate family member who is ill.

14.—BEREAVEMENT LEAVE

(1) On the death of—

(a) the spouse or defacto spouse of an employee;

(b) the child or stepchild of an employee;

(c) the parent or step-parent of an employee;

(d) the grandparent or grandchild of an employee;

(e) a sibling of the employee; or

(f) any other person who immediately before that person's death lived with the employee as a member of the employee's family,

the employee is entitled to be paid bereavement leave of up to two days.

(2) The two days need not be consecutive.

(3) Bereavement leave is not to be taken during the period of any other kind of leave. Where bereavement leave is taken, the employee agrees to provide, if requested, proof of the relationship to the deceased.

15—SICK LEAVE

The Department will apply the conditions contained in Clause 22.—Sick Leave of the Public Service Award 1992 with the exception that sick leave credits will only be on a full pay basis as follows—

	Sick Leave on full pay
On the day of initial appointment	6 days
On completion of 6 months continuous service	6.5 days
On the completion of 12 months continuous service	12.5 days
On the completion of each further period of 12 months continuous service	12.5 days

16.—PUBLIC HOLIDAYS

(1) The following days will be paid public holidays—

New Years Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, The Sovereigns Birthday, Foundation day, Labour Day.

(2) When any of these days mentioned falls on a Saturday or on a Sunday, the holiday will be observed on the next succeeding Monday.

(3) When Boxing Day falls on a Sunday or Monday the holiday will be observed on the next Tuesday. In each case the substituted day will be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

17.—FAMILY/CEREMONIAL/CULTURAL LEAVE

(1) An employee covered by this Agreement is entitled up to two days leave without loss of pay for family, ceremonial or cultural leave purposes.

(2) Family/Ceremonial/Cultural leave shall be available on an annual basis commencing 1st January each year and shall not accrue year to year.

(3) Such leave shall include leave to meet the employee's family responsibilities, customs or traditional law and enable the participation in family, ceremonial or cultural activities.

(4) Leave without pay may be granted by agreement between the employer and employee for ceremonial or cultural leave purposes.

(5) The employee shall where practicable, give the employer notice prior to the absence, of the intention to take leave. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

18.—ANNUAL LEAVE TRAVEL CONCESSIONS

(1) The Travel Concessions contained in the table in Clause 19(10) of the Public Service Award 1992 are provided to employees and their dependants of the Karratha Office of the Department when proceeding on annual leave to a destination outside the Karratha region.

(2) Provided that such concessions shall not exceed the value of the Apex return economy airfares from their headquarters to the destination of Perth then the employee may use that concession for any air travel destination.

19.—ANNUAL LEAVE LOADING

(1) The Department will apply the conditions contained in Clause 19(11) of the Public Service Award 1992, with the following additions—

(a) that the balance of the four weeks leave loading due to an employee on the current years leave entitlement will be payable in the first pay period in December of the year in which it becomes due.

(b) subject to the availability of funds, the employer may approve any application for the payout of any leave loading accrued prior to December 1995 to an employee.

(c) Any payout of accrued leave loading shall be in writing and sealed by signatories of the parties.

20.—ANNUAL LEAVE FOR CHAMBERS STAFF

Where practicable, employees who work in Chambers will clear annual leave in conjunction with their Commissioner.

21.—MEAL ALLOWANCE

When an officer has completed a period of overtime and has qualified for the payment of a meal allowance, such allowance shall be paid through the normal payroll processing procedures of the Department. Such payments shall be identified through specific tax free processing codes.

22.—NOTIFICATION OF CHANGE

(1) Where the employer has decided to take action that is likely to have a significant effect on an employee or make an employee's position redundant, the employee, and where appropriate the union, will be informed by the employer as soon as is practical after the decision has been made, of the action or the redundancy, and will have the opportunity to discuss with the employer—

(a) the likely effect of the action or redundancy in respect of the employee; and

(b) the measures that may be taken by the employee or the employer to avoid or minimise the significant effect.

(2) "Significant effect" means any changes in the composition, operation or size of the workforce or the skills required, changes in job opportunities, promotion opportunities, the need for retraining or transfer of employees.

(3) The employer is not required when providing information or holding a discussion to disclose information that may seriously harm—

(a) the Department's business undertakings; and

(b) the Department's interest in the carrying on or deposition of the business undertaking.

(4) If desired by any employee, full consultation will occur through the Civil Service Association of Western Australia (Inc.).

23.—DISPUTE RESOLUTION PROCEDURE

(1) Subject to the provisions of the Public Sector Management Act, 1994, the following procedures are to be followed in connection with questions, disputes or difficulties arising under this Agreement.

(a) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.

(b) If the parties are unable to resolve the dispute, the matter, at the request of the other party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed to the parties.

(c) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

24.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims with respect to salaries or conditions unless they are consistent with State Wage Case Principles.

25.—POTENTIAL NUMBER OF EMPLOYEESUNDER THIS AGREEMENT

The potential number of employees party to this Agreement is 55. The Department is also offering a Workplace Agreement and therefore some of the potential number of employees party to this Agreement may be reduced by those employees taking up the Workplace Agreement.

26.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed by John G. Carrigg,
Chief Executive Officer
for and on behalf of the
DEPARTMENT OF THE REGISTRAR.....
Date: 27 May 1996.

Signed for and on behalf of the
COMMUNITY AND PUBLIC SECTOR UNION/
CIVIL SERVICE ASSOCIATION WESTERN
AUSTRALIA BRANCH by: .....
Date: ..../ .... / ....

APPENDIX A

Mission	*Key Corporate Objectives*	*Priorities*	*Implementation Strategies*			*Outcomes*
			Structure	Work Organisation	Work Practices and Procedures	
To support the Western Australian Industrial Relations Commission to provide employers, employees and unions with a means of resolving industrial relations matters according to industrial relations legislation.	❑ Be sensitive and responsive to the needs of our customers	☑Consult with customers to determine their needs ☑Establish standards of service. ☑Ensure full and open information is available on the services we provide		• Review resources and training to each branch by 30/06/96.	• Staff operationalize customer service standards by 1/2/96. • Disability Service plans will be enacted by 1/2/96.	❑ Our Customers will be satisfied with our service
	❑ Continuously improve practices in all areas	☑Adopt innovation and flexible work practices which add value ☑Review systems and processes to achieve high standards of quality	• Offer products and services on an outcome based model by 31/12/96.	• The department to examine Quality accreditation and where appropriate implement by 31/12/96.	• Establish an operational review and accountability advisory group by 30/6/96.	❑ The Department meets best practice standards in all things that we do.
	❑ Provide services on a value for money basis in line with community expectations	☑The Department is managed within budget, consistent with Government policies and legislative requirements. ☑Provide the best possible service at the lowest possible cost	• Examine processes & mechanisms which will provide for the maximization of skills transfer across the organisation, 31/12/96.	• Review & develop appropriate delegations by 31/3/96 and implement by 30/6/96.	• Staff to adopt a team based approach to the management and delivery of products and services to the customer, by 31/10/96.	❑ Effectiveness and efficiency indicators will reflect the better use of resources
	❑ Recognise the contribution of all staff to the achievement of Corporate Objectives	☑Provide Human Resource systems which give an opportunity for staff to attain both career and corporate objectives ☑Deployment of Information Services and tools which empower staff with the means to attain departmental objectives and initiatives	• Outcome requirements of branches, established in the strategic plan, & implemented by 31/12/96. • Operational plans for branches developed by 31/12/96, in order to achieve the outcomes of the strategic plan	Review & establish consultative mechanisms for staff participation by 31/3/96.	• Review & update management manuals by 31/10/96 to reflect key operational items and Government initiatives. • Accrual based IT solutions in place by 30/6/96.	❑ Staff will be satisfied that they have contributed to the achievement of career and corporate objectives.

APPENDIX B
ANNUAL SALARIES APPLICABLE TO OFFICERS COVERED BY THIS ENTERPRISE AGREEMENT

Level	Salary per Annum $	1st Safety Net $	2nd Safety Net $	Salary 31/12/95	Salary 3 mnths prior to lodgement $	Salary 1/7/96 $	Salary 1/1/97 $
Level 1							
Under 17 Years	10,445	214	214	10,873	11,308	11,534	11,649
17 years	12,207	250	250	12,707	13,215	13,480	13,614
18 Years	14,238	292	292	14,822	15,415	15,723	15,880
19 years	16,481	338	338	17,157	17,843	18,200	18,382
20 years	18,507	380	380	19,267	20,038	20,438	20,643
21 years or 1st year adult service	20,331	417	417	21,165	22,012	22,452	22,676
22 years or 2nd year adult service	20,983	417	417	21,817	22,690	23,143	23,375
23 years or 3rd year adult service	21,634	417	417	22,468	23,367	23,834	24,072
24 years or 4th year adult service	22,281	417	417	23,115	24,040	24,520	24,766
25 years or 5th year adult service	22,932	417	417	23,766	24,717	25,211	25,463
26 years or 6th year adult service	23,583	417	417	24,417	25,394	25,902	26,161
27 years or 7th year adult service	24,332	417	417	25,166	26,173	26,696	26,963
28 years or 8th year adult service	24,850	417	417	25,684	26,711	27,246	27,518
29 years or 9th year adult service	25,616	417	417	26,450	27,508	28,058	28,339
Level 2							
1st year	26,533	417	417	27,367	28,462	29,031	29,321
2nd year	27,236	417	417	28,070	29,193	29,777	30,074
3rd year	27,975	417	417	28,809	29,961	30,561	30,866
4th year	28,756	417	417	29,590	30,774	31,389	31,703
5th year	29,573	417	417	30,407	31,623	32,256	32,578
Level 3							
1st year	30,696	417	417	31,530	32,791	33,447	33,781
2nd year	31,571	417	417	32,405	33,701	34,375	34,719
3rd year	32,473	417	417	33,307	34,639	35,332	35,685
4th year	33,399	417	417	34,233	35,602	36,314	36,678

Level	Salary per Annum $	1st Safety Net $	2nd Safety Net $	Salary 31/12/95	Salary 3 mnths prior to lodgement $	Salary 1/7/96 $	Salary 1/1/97 $
Level 4							
1st year	34,669	417	417	35,503	36,923	37,662	38,038
2nd year	35,664	417	417	36,498	37,958	38,717	39,104
3rd year	36,688	417	417	37,522	39,023	39,803	40,201
Level 5							
1st year	38,660	417	417	39,494	41,074	41,895	42,314
2nd year	39,993	417	417	40,827	42,460	43,309	43,742
3rd year	41,378	417	417	42,212	43,900	44,778	45,226
4th year	42,815	417	417	43,649	45,395	46,303	46,766
Level 6							
1st year	45,126	417	417	45,960	47,798	48,754	49,242
2nd year	46,697	417	417	47,531	49,432	50,421	50,925
3rd year	48,323	417	417	49,157	51,123	52,146	52,667
4th year	50,059	417	417	50,893	52,929	53,987	54,527
Level 7							
1st year	52,721	417	417	53,555	55,697	56,811	57,379
2nd year	54,563	417	417	55,397	57,613	58,765	59,353
3rd year	56,567	417	417	57,401	59,697	60,891	61,500
Level 8							
1st year	59,824	417	417	60,658	63,084	64,346	64,989
2nd year	62,157	417	417	62,991	65,511	66,821	67,489
3rd year	65,050	417	417	65,884	68,519	69,890	70,589
Level 9							
1st year	68,663	417	417	69,497	72,277	73,722	74,460
2nd year	71,104	417	417	71,938	74,816	76,312	77,075
3rd year	73,888	417	417	74,722	77,711	79,265	80,058
Class 1	78,098	417	417	78,932	82,089	83,731	84,568
Class 2	82,308	417	417	83,142	86,468	88,197	89,079
Class 3	86,516	417	417	87,350	90,844	92,661	93,587
Class *4*	90,726	417	417	91,560	95,222	97,127	98,098

APPENDIX C
CRITERIA FOR ACCESS TO THE 2ND AND 3RD PAY RISES

1. PERFORMANCE TARGETS

Pay Rise -2% from 1 July 1996

INITIATIVE	BASELINE	TARGET	OUTCOME	TIMELINE
Staff to become self sufficient in keyboarding and applications usage resulting in reduction of 2 FTE.	23% of staff proficient to 45 wpm.	70% of staff to be proficient to 35 wpm with 90% accuracy.	The Department will maintain and improve keyboard output with less FTEs.	By 30 June 1996.
Improved customer services including access times.	80% of customers satisfied with overall service. (sample est)	85% of customers - surveyed satisfied with overall service.	Customers will be satisfied with the service that they have received.	As at 30 June 1996
Reduced reliance on Contract staff in providing relief.	Current cost $107,000 in a full year.	Cost to be reduced to $57,000 per year or less	The Department maintains or improves service with a reduced relief cost of $57,000 p.a.	Measure at 30 June 1996.
Staff assist the WAIRC with Section 29 matters under Reg 9.	No Settlement of Issues hearings prior to the agreement.	A minimum of 28 Settlement of Issues matters to be dealt with per month on average	Parties have a means of conciliating issues without the need to refer matters to a Commissioner.	Measure at 30 June 1996
The implementation of strategies as per Appendix A		See Appendix A of the Agreement	The department meets its planned objectives.	Measure at 30 June 1996

Pay Rise -1% from 1 January 1997

Staff to become self sufficient in keyboarding and applications usage consolidating a reduction of 2 FTE.	70% of staff proficient to 35 wpm with 90% accuracy.	90% of staff to be proficient to 45 wpm with 95% accuracy.	The Department will maintain and improve keyboard output with less FTEs.	Measure at 31 December 1996
Continuous and management improvement resulting in further staff efficiencies.	Budget 1996/97.	$47,000 productivity improvement/ cost saving in full year	The Department improves its service by delivering a better level of service with less cost,	Measure at 31 December 1996 adjusted for part year.
Improved customer services including access times.	85% of customers satisfied with overall service. (sample est)	88% of customers - surveyed satisfied with overall service.	Customers will be satisfied with the service that they have received.	Measure at 31 December 1996
Staff assist the WAIRC with Section 29 matters under Reg 9.	No Settlement of Issues meetings prior to the agreement.	A minimum of 28 Settlement of issues matters to be dealt with per month on average	Parties have a means of conciliating issues without the need to refer matters to a Commissioner	Measure at 31 December 1996.
The implementation of strategies as per Appendix A		See Appendix A of the Agreement	The department meets its planned objectives	Measure at 31 December 1996

2. CRITERIA FOR PAYMENT, PARTIAL DEFERMENT OR DEFERMENT OF PAY RISE

PAY RISE 1/7/96 - ASSESSMENT AS AT 30 JUNE 1996

TARGET	MEASUREMENT TECHNIQUE	POINTS FOR MEETING TARGET
70 % of staff to be proficient to 35 w.p.m. typing speed with 90% accuracy resulting in a reduction of 2 FTE.	On line typing tutor and testing.	1
85% of Customers surveyed are satisfied with overall service.	Customer survey using statistical sampling.	1
Cost of contract relief is reduced to a$57,000 per year or less.	Review of actual expenditures to budget.	1
A minimum of 28 Regulation 9 Settlement of issues matters are being dealt with per month.	Extract from Database.	1
A minimum of five of the seven implementation strategies at Appendix A have been implemented by the due dates	Strategy in place and operating	1

PAY RISE 1/1/97 - ASSESSMENT AS AT 31 DECEMBER 1996

TARGET	MEASUREMENT TECHNIQUE	POINTS FOR MEETING TARGET
90 % of staff to be proficient to 45 w.p.m. typing speed with 95% accuracy.	On line typing tutor and testing.	1
88% of Customers surveyed are satisfied with overall service.	Customer survey using statistical sampling.	1
Continuos improvement results in $47,000 productivity improvement and cost savings in the full year..	Review of actual expenditures to budget extrapolated from part year data..	1
A minimum of 28 Regulation 9 Settlement of issues matters are being dealt with per month.	Extract from Database.	1
A minimum of five of the seven implementation strategies at Appendix A have been implemented by the due dates	Strategy in place and operating	1

(2.2) CRITERIA FOR PAY RISE

For each 1 point scored then 20% of the pay rise applicable is available. Where 5 points are not scored then the provisions of partial payment and deferment of the remainder is conducted as per the requirements of the agreement.

EAST SPART PROJECT (VARANUS ISLAND) AGREEMENT 1996
No. AG 78 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Clough Engineering Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. AG 78 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

9 May 1996.

Order.

HAVING heard Mr M. Creedy on behalf of the Applicant and Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr W. Tracey on behalf of Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch) and Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch) and Mr C. Young 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 following schedule titled the "East Spart Project (Varanus Island) Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 29th day of April 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.] Senior Commissioner.

———

Schedule.

1. TITLE

This Agreement shall be known as the East Spar Project (Varanus Island) Agreement 1996.

2. ARRANGEMENT

1. Title
2. Arrangement
3. Area, Scope and Parties Bound
4. General Conditions of Employment
5. Aims and Objectives
6. Non Precedent
7. Boots and Boot Allowance
8. Site Allowance
9. Welding Related Allowances
10. Hours of Work
11. Improvement Measures
12. Rest and Recreation Leave/Hours of Work
13. Project Payment/Redundancy Payment
14. Superannuation
15. Taxi Fares
16. Resolution of Disputes
17. Safety and the Environment
18. Safety Grievance Procedure
19. Alcohol and Prohibited Drugs
20. Security
21. Messing and Accommodation
22. Hygiene
23. Equal Employment Opportunity
24. Public Holidays and Annual Leave
25. Cyclone Procedure
26. Wage Rates
27. No Extra Claims
28. Term
29. Signatories to Agreement

3. AREA, SCOPE AND PARTIES BOUND

This Agreement shall apply to an estimated 60 employees of Clough Engineering Limited operating on behalf of the East Spar Alliance and engaged on the construction of a Gas Treatment Plant on Varanus Island.

Awards

Metal Trades (General) Award 1966 Part II—Construction Work No. 13 of 1965

Engine Drivers (Building and Steel) Construction Award No. 20 of 1973

Electrical Contracting Industry Award No. R22 of 1978

Unions

The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers—WA Branch

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers

Union of Australia—Western Australian Branch

Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division—WA Branch

4. GENERAL CONDITIONS OF EMPLOYMENT

Except as provided in this Agreement, the terms and conditions of each employee covered by this Agreement shall be as prescribed in the Award by which the employee would be bound if not for this Agreement and where the provisions of such Award are inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

5. AIMS AND OBJECTIVES

This Agreement will facilitate a co-operative approach to employment relationships with the objective of achieving a productive and efficient working environment on the project.

Further, the parties are jointly committed to ensuring a successful and timely completion of the project.

6. NON PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other project, plant or enterprise, or to be cited in any arbitral or other proceedings before any Industrial Relations Tribunal.

7. BOOTS AND BOOT ALLOWANCE

(1) Each employee on commencing employment with the employer shall be provided with one pair of safety boots free of charge.

(2) Subclause (1) of this clause shall not apply if the employer has previously issued safety footwear to a current employee and such footwear is in good condition.

(3) Employees shall also be paid a safety footwear allowance of $0.06 per hour for each hour worked, except where such an allowance is prescribed by their relevant Award.

8. SITE ALLOWANCE

A site allowance of $3.50 per hour for each hour worked shall be paid in recognition of the disabilities associated in carrying out construction work on the Varanus Island site and such payment shall be in lieu of all prescribed disability allowances in the named Awards and shall be in addition to the location allowance applicable in each of the named Awards.

9. WELDING RELATED ALLOWANCES

9.1 Welding Allowance

A welder special class who is qualified to and working to the levels set out in ASME-9 and ANSI-B-31.3, shall be paid an allowance at the rate of $27.80 per week. This allowance shall be in addition to all other applicable allowances and shall be paid for all purposes.

9.2 Work Inside Pipes or Pressure Vessels

9.2.1 Welding Work

An employee required to perform welding work inside pipes or pressure vessels shall be paid an allowance of $2.35 per hour worked, whilst employed on such work.

9.2.2 Other Work Inside Pipes or Pressure Vessels

An employee, other than an employee required to perform welding work, who is required to perform work within pipe or pressure vessels, shall be paid an allowance of $1.35 per hour worked, whilst employed on such work.

9.2.3 Allowances Not Cumulative

The allowances prescribed in (9.2.1) and (9.2.2) above shall not be paid cumulatively, for any time worked.

10. HOURS OF WORK

Notwithstanding the provisions of the relevant Award(s), starting times of the ordinary working hours may be altered by agreement between the employer and employees concerned to facilitate a more productive working day, provided they are within the spread of hours 6.00am to 6.00pm. Where shift work is to be worked, the provisions of the relevant Awards will apply.

11. IMPROVEMENT MEASURES

In order to achieve the main aims of improved productivity, efficiency and flexibility, the following measures will be implemented.

(1) Electronic Fund Transfer—Payment of wages will be by Electronic Fund Transfer into bank accounts nominated by employees.

(2) Flexibility—In the interests of developing a more highly skilled and flexible project workforce and removing restrictive demarcation barriers from the workplace, employees shall—

(a) Carry out all directions and duties that are within the scope of their skill and training, whilst ensuring the safety and quality requirements of the project are maintained.

(b) Acknowledge the importance of complying with and observing all safety rules and regulations set down for the project, particularly in a construction environment.

(c) Subject to appropriate training, properly use all protective clothing and equipment provided by the employer for specified circumstances.

(d) Comply with the disputes avoidance procedure as set out in this Agreement.

(e) Recognise the right of the employer to have an appropriate number and mix of classification skills during any hours of work.

(3) Sick Leave—On lawful termination of employment under this Agreement an employee with sick leave accrued for their duration on the project under the terms of the relevant Award, which has not been taken, shall be paid the amount of outstanding sick leave hours at his ordinary rate of pay as prescribed by this Agreement.

The provisions of this clause do not apply to casual employees.

12. REST AND RECREATION LEAVE/HOURS OF WORK

(1) Employees engaged in work to which this Agreement applies shall be entitled to Rest and Recreation Leave in accordance with the relevant award after the completion of each four (4) weeks' continuous service on site by the employee in lieu of the four months of continuous service provided therein.

(2) The leave provided for in subclause (1) hereof shall be taken as soon as practicable, as agreed between the employer and the employee or, in the absence of agreement, upon not less than one week's notice by the employer to the employee.

(3) Notwithstanding the provisions of the relevant awards, an employee who works in excess of 38 ordinary hours in any week shall accrue an entitlement to 24 minutes worked in excess of seven hours 36 minutes per day, provided the maximum accrual in any week shall not exceed two hours.

(4) The leave so accrued shall be taken concurrently with the period of leave provided in subclause (1) hereof, provided that should the services of an employee terminated with any such accrued leave not taken, he/she shall be given payment in lieu of that leave.

(5) During each period of Rest and Recreation Leave, the employee shall be entitled to a break of eight (8) days inclusive of travelling time.

The payment for such break shall be as specified by the relevant Award provision.

13. PROJECT PAYMENT/REDUNDANCY PAYMENT

(1) A project payment of $75.00 per completed week of service, shall apply to the construction work on Varanus Island.

(2) For the purposes of calculating pro-rata entitlements when required upon commencement or termination from the project, an employee on-site for less than one week shall accrue the payment only for those days which the employee worked on-site within that week, calculated at the rate of $15.00 per day Monday to Friday.

(3) The Project Payment shall accrue on each week the employee undertakes construction work on Varanus Island.

(4) By agreement between each employee and the employer be paid either at the end of each work cycle or on termination of employment from the project.

(5) The Project Payment prescribed by this Clause shall be in addition to the relevant Award redundancy provisions and is in full settlement of the project payment and redundancy payment claims raised during the negotiations of this Agreement.

14. SUPERANNUATION

The employer party to this Agreement undertake to make contributions to an appropriate superannuation fund which meets the approved standards at the prevailing rate for the engineering construction industry.

15. TAXI FARES

An employee who uses a taxi to travel to or from Perth airport, may upon presentation of a bona fide taxi company issued receipt, be reimbursed up to $37.50 per taxi trip to or from Perth Airport.

16.—RESOLUTION OF DISPUTES

(1) Where a question, dispute or difficulty arises, the employee concerned or his/her Shop Steward shall initially discuss the matter with their immediate Supervisor.

(2) If the question, dispute or difficulty is still unresolved by the discussion referred to in subclause (1) hereof, the employee together with his/her Shop Steward and their Supervisor shall discuss and attempt to resolve the matter with the Project Manager.

(3) Where the foregoing discussions fail to resolve the matter of concern, it shall be referred to a Senior Management representative and the relevant Union organiser, at which stage the parties shall then initiate steps to resolve the grievance as soon as possible.

(4) While the steps in subclauses (1), (2) and (3) hereof are being followed, industrial action shall not be taken.

(5) If the question, dispute or difficulty remains unresolved, either party may refer the matter to the Western Australian Industrial Relations Commission, provided that any party reserves the right to refer an issue to the Commission at any time.

(6) The parties will give each other the earliest possible advice of any problem which may give rise to a question, dispute or difficulty.

(7) The employer will ensure that all practices applied during the operation of the procedure are in accordance with safe working principles and consistent with established project custom and practices.

(8) At all stages of this process, the emphasis shall be on a negotiated settlement at the project level.

17.—SAFETY AND THE ENVIRONMENT

(1) All safety and environmental rules prescribed from time to time and applicable to the Project and its location shall be adhered to at all times by all employees.

(2) Where safety glasses and/or helmets are required, they will be provided by the employer and must be worn on the job at all times in areas nominated by the employer. Failure to wear safety equipment and suitable footwear may lead to disciplinary action.

(3) Applicants for employment, who at the direction of the employer attend a SOLAS/HUET course and are subsequently employed by the employer on construction work on Varanus Island, shall be paid eight (8) ordinary hours pay at the relevant Award rate.

18.—SAFETY GRIEVANCE PROCEDURE

It is the intention of this procedure to resolve safety issues whilst wherever possible maintaining productive work. It is emphasised that at all times employees must accept responsibility for their own work.

(1) An employee shall first raise an issue relating to Occupational Health, Safety and Welfare with his/her Foreman, Supervisor or Safety Representative. Where an employee encounters what he/she believes to be a safety hazard, the employee shall immediately advise the Foreman, Supervisor or Safety Representative and that work shall not be carried out until such time as the matter is resolved, provided the work may continue on conditions agreed between the parties. The aim should be to resolve the matter as soon as possible.

(2) Should the safety issue remain unresolved, the Safety Advisor and the Safety Representative concerned shall meet and inspect the work with a view to resolving the issue.

(3) Should the safety issue remain unresolved the parties prescribed in subclause (2) shall meet with the Project Manager.

(4) Where the matter is still not resolved a special meeting of the project safety committee shall be convened. The committee shall ensure that it is joined by all persons necessary for the purpose of the resolution of that issue.

(5) If the issue is still not resolved, a DOHSWA inspector should be advised of the problem and that inspector may be requested by any of the parties to advise on the application and interpretation within the area of concern.

(6) All parties will endeavour to maintain continuous productive work for all employees.

Nothing herein diminishes an employee's right to refuse to work in an area where he/she has reasonable grounds to believe that to continue to work would expose him/her or any other person to a risk of imminent and serious injury or imminent and serious harm to his/her health.

Employees who have removed themselves, or who are removed by the employer from their immediate area for reasons associated with the safety issue may be allowed alternative work in another area by their employer.

19. ALCOHOL AND PROHIBITED DRUGS

Alcohol and prohibited drugs and other illegal intoxicants are prohibited on the work site.

Prohibited drugs and illegal intoxicants are also prohibited on Varanus Island.

Employees should be aware that the Company regards any breach of this condition as serious and one that will not only result in accommodation being withdrawn, as soon as transport can be arranged but also instant dismissal.

20. SECURITY

In the interest of safety and security, all employees may be subject to a security check before departure to or from the work location.

This will include searches of personal effects, hand luggage and stowed luggage.

21. MESSING AND ACCOMMODATION

Full board and accommodation will be provided by the Company at a construction camp specifically established for this project, on the basis of one person per room, free of cost to employees, while they continue to work in conformity with the provisions of the appropriate award and these conditions of employment. The construction camp facilities include common ablution blocks and laundry facilities. Employees shall be responsible for the laundering of their own clothes.

The company in conjunction with the camp contractor have developed camp rules which are designed to provide an accommodation environment which can be enjoyed by all residents. Failure to comply with the camp rules will be treated as serious and may result in accommodation being withdrawn as soon as transport can be arranged and employment being terminated.

Employees will be provided with the camp rules at the onsite induction and are urged to ensure that they comply with all the rules and in particular to those referring to drugs, excessive noise and offensive behaviour.

22.—HYGIENE

Crib rooms, messing facilities, showers and toilets are supplied for the employees use and are to be used for the appropriate purpose.

The displaying of posters, photographs, cartoons etc which may cause offence to other workers or visitors to site including the defacing of site facilities is prohibited.

Satisfactory standards of hygiene are required at all times.

23.—EQUAL EMPLOYMENT OPPORTUNITY

The Company has developed an equal employment opportunity program which seeks to identify and eliminate discrimination, victimisation and sexual harassment practices that may exist in the workplace.

In line with this programme the company will not condone any form of harassment, discrimination or victimisation, or any such conduct that has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment due to intimidation, innuendo or a display in the workplace of sexually suggestive pictures, sexually explicit or offensive jokes/graffiti or physical assault.

Any harassment, discrimination or victimisation will be considered to be a serious violation of company policy and will be dealt with accordingly by corrective counselling and may result in termination.

Any employee who feels that they are a victim of harassment, discrimination or victimisation by any supervision, management official, or other employee, Client, or any other person in connection with their employment should bring the matter to the immediate attention of the supervisor or a senior company officer.

24. PUBLIC HOLIDAYS AND ANNUAL LEAVE

Notwithstanding any award clause or provision to the contrary, employees engaged pursuant to this Agreement shall be entitled to the public holidays and annual leave as set out in Clause 12.—Holidays and Annual Leave of the Engine Drivers (Building and Steel Construction) Award.

25. CYCLONE PROCEDURE

(1) The following shall apply when, because of a cyclone, the employer stands down employees employed under this Agreement.

(2) Each employee who:

(a) at the commencement of the cyclone period reports for and remains at work until otherwise directed by the employer or is evacuated to the Dampier/Karratha area; and

(b) following the "all clear" resumes duty in accordance with the direction of the employer;

shall be paid for the normal rostered ordinary time and overtime hours occurring during the stand down.

(c) an employee who is evacuated to Perth and following the "all clear" resumes duty in accordance with the direction of the employer shall be paid for the normal rostered ordinary hours, occurring during the period of the stand down, when they resume duty in accordance with the direction of the employer.

(d) notwithstanding the provisions of this sub-clause, an employee who prior to the stand down due to a cyclone has commenced an overtime shift shall be paid what would have been earned on that shift but for the stand down.

(3) An employee who, on any day during the cyclone stand down:

(a) is required for work and is requested to do so by his/her employer; and

(b) is not willing or available to work when so requested;

is not entitled to pay for that day.

(4) An employee who is required to remain at or who is called out to work during the period of time in which the operation has been stood down because of a cyclone shall be paid for all time worked at penalty rates but not so as to exceed a maximum of double time, unless the day concerned is a public

holiday in which event the maximum payment, subject to other provisions of this Agreement, shall not exceed 2.5 times the single time rate.

(5) (a) After the "all clear" has been given each employee shall be notified by the employer of:

(i) the time at which normal operations are to resume; and

(ii) the time at which employees are to resume work.

An employee who does not present for work at the time referred to in subparagraph (ii) is in respect of that day only, entitled to payment for time worked.

(b) The notification to be given by the employer to the employee pursuant to paragraph (a) of this sub-clause may be per medium of written notice or by special announcement broadcast by radio and/or television provided that such an announcement is repeated at not less than hourly intervals on at least two occasions prior to the then stated time at which normal operations are to be resumed.

(6) Where, on the day following the resumption of normal operations or on any subsequent day an employee cannot, because of damage caused to the operations by the cyclone be usefully employed, the employer shall resolve the matter in accordance with Clause 16.—Resolution of Disputes of this Agreement, whether the emloyee is stood down without pay.

26. WAGE RATES

In accordance with the successful operation of this Enterprise Agreement and a continued commitment from all parties, wage increases as set out herein shall be payable from the beginning of the first pay periods, to commence on or after the dates specified in the schedule.

These wage increases are dependent on an ongoing commitment to and implementation of, the efficiencies detailed herein. Any additional/supplementary Safety Net Adjustment(s) arising from a decision of the Western Australian Industrial Commission that may apply during the currency of this Agreement is deemed to be absorbed within the wage rates specified herein.

(1) Wage Rates for Classifications—Metal Trades (General) Award 1966—Part II Construction Work.

Classification	EBA Rate Per Week (from the first pay period on or after 1.1.96) $	EBA Rate Per Week (from the first pay period on or after 1.4.96) $
Welder—Special Class	586.34	598.07
Welder	576.31	587.84
Boilermaker	576.31	587.84
Tradesperson the greater part of whose time is occupied in marking off and/or template making	581.27	592.90
Tradesperson	576.31	587.84
Pipe Fitter	581.27	592.90
Certificated Rigger or Scaffolder	542.80	553.66
Rigger or Scaffolder—Other	528.40	538.97
Tool and Material Storeperson	512.24	522.48
Tradesperson's Assistant	495.48	505.39
Tradesperson's Assistant—who from time to time uses a grinding machine	499.02	509.00

NOTE: The above "EBA Rate Per Week" excludes Award provisions relating to tool and leading hand allowances.

(2) Wage Rates for Classifications—Engine Drivers (Building and Steel Construction) Award.

Classification	EBA Rate Per Week (from the first pay period on or after 1.1.96) $	EBA Rate Per Week (from the first pay period on or after 1.4.96) $
Mobile Crane Operators		
- up to 8 tonnes	542.80	553.70
- 8 to 15 tonnes	555.00	566.10
- 15 to 40 tonnes	565.40	576.70
- 40 to 80 tonnes	573.50	585.00
- 80 to 100 tonnes	579.70	591.30
- 100 to 140 tonnes	589.00	600.80
- 140 to 180 tonnes	601.20	613.20
- 180 to 220 tonnes	617.50	629.90
- Over 220 tonnes	638.70	651.50

NOTE: The above "EBA Rate Per Week" contains all relevant Award provisions.

(3) Wage Rates for Classifications—Electrical Contracting Industry Award.

Classification	EBA Rate Per Week (from the first pay period on or after 1.1.96) $	EBA Rate Per Week (from the first pay period on or after 1.4.96) $
Level 3		
(i) Electrical Installer	595.55	607.46
(ii) Electrical Fitter	595.55	607.46
(iii) Instrument Fitter/ Electrical Grade 1	616.31	628.64
Level 5		
(i) Electrical Assistant	509.88	520.08

NOTE: The above "EBA Rate Per Week" excludes Award provisions relating to "Licence Allowance", "Tool Allowance" and "Grievance Procedure and Special Allowance".

(4) The employer will provide all of the tools required for construction work on Varanus Island and therefore no tool allowance will be applicable.

27. NO EXTRA CLAIMS

A condition of this Agreement is that the Unions will make no further claims on the employer over and above the conditions set out in this Agreement for the life of the construction phase of the project.

28. TERM

This Agreement shall have effect from 1 January 1996 and shall remain in force until practical completion of the Project.

29.—SIGNATORIES

Clough Engineering Limited	Mark Diamond/D. Lansbury	
Date	8 March 1996	
Witness	K. Calvert/P. Campbell	
Date	8/3/96	14/3/96
The Automotive, Food, Metals, Engineering Printing and Kindred Industries Union of Workers—WA Branch	J. Ferguson	
Date	13 March 1996	
Witness	S. McGurk	
Date	13 March 1996	
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—WA Branch	Bill Ethell	
Date	8 March 1996	
Witness	J. Graham	
Date	8 March 1996	
Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division—WA Branch	W. Game	
Date	8 March 1996	
Witness	Mark Diamond	
Date	8 March 1996	

EDUCATION DEPARTMENT OF WESTERN AUSTRALIA (CSA) ENTERPRISE AGREEMENT 1996 No. PSA AG 7 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Education Department of Western Australia

and

The Civil Service Association of Western Australia Incorporated.

No. PSA AG 7 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER A.R. BEECH.

21 May 1996.

Order.

HAVING heard Mr R. Copeland on behalf of the Applicant and Ms L. Thomas and Ms J. Gaines 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 Education Department of Western Australia (CSA) Enterprise Bargaining Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule commencing on and from the 29th day of April, 1996.

(Sgd.) A.R. BEECH,
[L.S] Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the Education Department of Western Australia (CSA) Enterprise Agreement 1996

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. 4% Second Tier and 1989 Structural Efficiency Principle
11. Objectives and Principles
12. Productivity Improvement
13. Consultation/Management of Change
14. Reform Initiatives
15. Joint Consultative Committee
16A Grievance Settlement Procedure
16B Dispute Settlement Procedures
17. Flexibility in Working Hours
18. Higher Duties Allowance During Annual Leave—Ministerial Officers
19. Parental Leave
20. Family Carers Leave
21. Ceremonial Leave
22. Annual Leave Travel Concessions Urgent Personal Business
23. Union Facilities, Access
24. Long Service Leave
25. Salary Increases
26. Replacement Agreement
27. Signatures of Parties to the Agreement

Schedule A—Productivity
Schedule B—Salary Scales
Schedule C—Timeframes for Initiatives to be Implemented
Schedule D—Administrative Instruction 1001
Schedule E—Approximate Number of Employees Covered by this Agreement

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Education Department employees including Senior Executive Service employees working in the Education Department of Western Australia, who are members of or eligible to be members of the Union, party to this agreement.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the Minister for Education and the Director-General of Education (the Employer) and the Civil Service Association of WA Inc (the Union).

5.—DEFINITIONS

For the purposes of this agreement the following definitions shall apply:

(1) "Agreement": The Education Department of Western Australia (CSA) Enterprise Agreement 1996.

(2) "Department": The Education Department of Western Australia.

(3) "Employee": for the purpose of this agreement, someone who is referred to at Clause 3.—Scope of the Agreement.

(4) "General Staff": employees eligible to be represented by the Union and covered by this agreement.

(5) "Employer": The Minister and The Director-General of the Education Department of Western Australia.

(6) "Government": the State Government of Western Australia.

(7) "Minister": the Minister or Ministers of the Crown responsible for the administration of the Department.

(8) "Union": Civil Service Association of WA Inc.

(9) "WAIRC": The Western Australian Industrial Relations Commission.

(10) "PSA": Public Service Award 1992.

(11) "GOSAC": Government Officers Salaries, Allowances and Conditions Award 1989.

(12) "EDMOSAC": Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No 5 of 1983.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This agreement shall operate on and from the 29th day of April 1996 and shall remain in force for a period of 12 months provided that the salary increases specified in Clause 25.—Salary Increases of this agreement shall come into effect in accordance with that clause.

(2) Subject to the continuation of the initiatives contained in this Agreement, the pay quantum achieved as a result of this agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement.

(3) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the WAIRC.

(4) The parties will review this Agreement at least six months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

(5) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(6) The parties genuinely commit to ongoing consultation and bargaining in good faith during discussions and negotiations for the next Agreement.

7.—NO FURTHER CLAIMS

(1) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement.

(2) This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

(3) This Agreement settles all past productivity since 1991.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

(1) This Agreement shall be read in conjunction with the existing awards and agreements that apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. The parties recognise that the relevant awards and agreements consist of:

- Public Service Award 1992
- Government Officers Salaries, Allowances and Conditions Award 1989
- Education Department Ministerial Officers Salaries Allowances and Conditions Award No 5 of 1983
- Memorandum of Agreement between The Ministry of Education and The Civil Service Association of WA Inc. Staffing Formula Review—1993.

9.—SINGLE BARGAINING UNIT

(1) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Education Department of Western Australia and the Civil Service Association of Western Australia (CSA) .

10.—4% SECOND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLE

The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

11.—OBJECTIVES AND PRINCIPLES

(1) The Education Department of Western Australia is committed to providing a sound, flexible and efficient education system aimed at providing students with the necessary skills, competencies and confidence to be able to successfully participate in, and contribute to, today's society. Essential to this commitment is the Department's obligation to constantly evaluate its performance, to establish initiatives, and to implement changes that take into account the changing needs of its students, the requirements and expectations of the community, and accountability at the school level.

(2) This Agreement reflects the Department's obligation to fulfil those commitments and is consistent with the Government's policy of increasing effectiveness and efficiency through improved flexibility and productivity.

(3) The Education Department's 1995-1997 Strategic Plan outlines the key strategic improvement areas to be developed over the next three years. These strategic issues are crucial to the success of the government school system:

- Curriculum responsiveness
- Flexibility in Schooling
- Staff Professionalism and Working Relationships
- Resource Management
- Quality Assurance in Education

(4) The objectives and their relevant actions and targets have been established to address the improvement sought in the strategic issues. These are as follows:

- to provide learning programs that will equip students with the skills necessary to succeed in a constantly changing social and economic environment;
- to improve the outcomes for students at risk of not achieving their educational potential;
- to provide schools with the flexibility and the decision-making authority necessary to deliver quality educational programs suited to their student group;
- to have professional, productive and motivated staff who are committed to the objectives of the organisation, empowered to meet these objectives, and whose skills are valued by the community;
- to develop an organisational culture that is characterised by trust, mutual respect, participation and the acceptance of responsibility and is free from discrimination and harassment;
- to improve resource management in order to obtain the best educational outcomes with available resources; and,
- to assure parents, and the wider community of the quality of educational outcomes achieved in the government school system.

(5) The objectives of this Agreement are:

- to satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services;
- to achieve the Department's mission and improve productivity and efficiency in the Department through ongoing improvements;
- to promote the development of trust and motivation and to continue to foster enhanced employee relations;
- to facilitate greater flexibility in employment conditions, work organisation practices and procedures and the allocation of human and other resources;
- to promote increased satisfaction from jobs and secure employment opportunities.
- to develop and pursue changes on a cooperative continuing basis by using participative practices;
- to promote health, safety, welfare and equal opportunity for all employees, and
- to identify measures which will lead to improved performance and productivity.

12.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Productivity Improvement

(a) The Education Department's mission is to ensure that students develop the understandings, skills and attitudes relevant to individual needs, thereby enabling them to fulfil their potential and contribute to the development of our society.

(b) All staff strive for excellence in learning and teaching and are committed to maximising the educational achievements of all students and the maintenance of an appropriate learning and teaching environment.

(2) Strategies and Initiatives developed to achieve these Objectives.

(a) The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of programme and service delivery of the Education Department.

(b) The parties are committed to the development and implementation of productivity improvements which include, but are not limited to:

- customer focus;
- changes to work practices;
- continuous improvement;
- review of, and implementation of, flexible application of employment conditions;
- improvement of the management of staff performance;
- current staffing practices;
- application of new technology.

(c) The parties are committed to the development and implementation of the productivity improvement initiatives and plan as detailed in Schedule A where they fall within the term of this Agreement.

(d) The parties also agree to develop and implement productivity improvements by way of:

- Client Surveys;
- Work Practices;
- Quality Improvement/Continuous Improvement; and
- Staffing.

13.—CONSULTATION/MANAGEMENT OF CHANGE

(1) The parties agree to an ongoing genuine commitment to information sharing and discussions on matters relevant to the operation of the Department. It is acknowledged by the parties that effective communication embracing comprehensive feedback and mutual understanding is essential to achieve the objectives of this Agreement.

(2) Principle

The implementation of workplace reform requires the involvement of stakeholders and their representatives.

(3) Initiation of Change and Consultation

(a) It is agreed that consultation with staff covered by this agreement and the CSA on proposed significant changes to work organisation shall, where practical, occur prior to change being made or implemented;

(b) If management proposes to make any significant change, which is likely to affect existing work practices, working conditions or employment prospects of staff, the CSA and the staff affected shall be notified by the Department as early as possible.

(4) Reform Process

(a) The reform process will be documented. The documentation will set out the aims, reasons, needs, or objectives, relevant supporting information, and the proposed process for implementing the workplace reform. The documentation will be circulated to all staff likely to be affected. Minor adjustments to procedures and policies may be made by the Department through less formal processes, eg consultation with the CSA.

(b) Management shall discuss the reform proposals with all staff likely to be affected by the proposed change(s) giving them the opportunity to comment on the proposed documentation, process and justification for change. CSA members will be entitled to seek union advice and representation at any stage of the reform process.

(c) If it is anticipated that any of the following is being considered by Department management during the reform process:

(i) relocating employees;

(ii) creating or eliminating a significant number of positions;

(iii) changing hours of operation across the Department;

(iv) introducing significant technological or structural change;

the Director of Industrial Relations Directorate, or nominee, will be advised by Department management, and the Director will notify the CSA in writing.

(d) Staff, who are likely to be affected, will be involved in the examination of the reform proposal.

(e) Education Department management will consult with the CSA and endeavour to negotiate on the process of implementation of any recommendations or changes listed in (c) above. Neither the Department nor the CSA shall frustrate the process or unreasonably prevent agreement being reached.

(f) Where changes are likely to lead to positions becoming redundant, the Department must, comply with Award/Agreement conditions for redundancy/redeployment.

(g) The status quo will remain, if practicable, during the consultation process contained in this clause.

14.—REFORM INITIATIVES

(1) Over the next five years it is the Department's goal that schools will adopt a greater outcome-based approach to learning and teaching. Schools will have greater flexibility to develop programs which meet the specific needs of their students, local communities and the Department. Opportunities will be provided for schools to increase the flexibility of their internal structures and for the Department to encourage diversity in the types of schools. The goal in doing so is that schools will be better able to meet the needs of their students.

(2) The parties are committed to work towards greater flexibility in the way work is organised and the skill base of its staff. In order to achieve this flexibility, all employees are committed to identifying flexibilities and contributing to their implementation.

(3) The parties agree that this change will be implemented through a gradual process that ensures that individual employees are not disadvantaged and that is consistent with merit and equity principles. Security of employment, the maintenance of a well resourced transfer system for Level One Ministerial Officers, and training before the introduction of change is important to the achievement of this goal.

(4) It is acknowledged by the parties that general staff employed in schools will be involved in school based decisions and will have access to appeal provisions that extend beyond the school site.

(5) The parties agree to progress these workplace reform initiatives through an integrated framework which is expected to deliver significant enhancement to the efficiency and effectiveness of school operations in the medium to long term.

(6) The major elements of the framework are:

Initiative 1—Personnel 2000

(a) The Personnel 2000 system will provide schools with the means to authorise and process key personnel information by interfacing with the central Staffing Payments system. This will assist the move towards a greater client focus, provide a better service to the schools and enable easy access to school personnel and payroll information. The parties are committed to the implementation of Personnel 2000 across the government school system. This Agreement is in full settlement of any salary claim associated with this initiative.

(b) The initial implementation will include the following Human Resource functions:

- Leave;
- Rosters;
- Teacher Relief;
- General Payroll details;
- Access to Personnel details.

(c) Key Milestones:

(i) Term 2 1996

- Personnel 2000 live in up to 85 schools;

(ii) Term 3 1996

- System enhancements to functionality and user experience and feedback incorporated;
- Ongoing training; and,
- Personnel 2000 live in up to an additional 175 schools.

(iii) Term 4 1996

- Further extensions to framework developed covering the full range of policy guidelines;
- Upgraded system functionality available;
- Ongoing training; and,
- Hardware installation for further schools.

(d) It is acknowledged that the Personnel 2000 system will impact upon the workload and responsibility of the Registrar. The parties will jointly review for 1997 the impact on workload of Personnel 2000 in the context of any future agreement.

Initiative 2—Relocation System

(a) Improvement in the Operation of the current Transfer System for Ministerial Officers.

The parties agree that a system to transfer permanent employees within the Education Department of WA is essential to enable it to fulfil its responsibilities to its employees and also to enable the schooling system to function in an efficient manner.

Two types of school specific transfers exist, one which is compulsory ie. reallocation and the other

that is voluntary ie. relocation. Both systems are important to the Department in terms of productivity and will be retained for the life of this agreement.

(b) Reallocation

Currently, when a school becomes "overformula" permanent employees at the school can be offered equivalent hours at another school, as long as that school is less than 20 kms away. An employees hours are fixed and can only be reduced if the individual employee refuses the offered transfer. By reallocating employees from "overformula" to "underformula" schools the Department is able to efficiently manage its whole of Department full time equivalent employee numbers.

(c) Relocation

Relocation is the voluntary transfer system which enables Level One Ministerial school employees to increase their hours, or to transfer from one school to another. This type of transfer is initiated by the employee and has direct benefits to the employee. Also, the Department benefits from this transfer system by being able to retain experienced officers within the school system.

For this agreement the parties will establish a working party to review the relocation system. The parties agree to implement the recommendations made by the working party to improve the system and ensure that employees and site managers are aware of the transfer system, a priority system is established for employees transferring, resourcing is provided to ensure that the lists provided to schools are up to date, and that the relocation system is the method endorsed by the Department to fill school vacancies and is therefore enforceable.

The parties agree that individual employees will not be disadvantaged in terms of access to transfers through the current relocation system by initiatives included in this agreement that provide schools with greater school based decision making. However, the parties agree that when there is more than one employee of equal priority, who wishes to transfer through voluntary relocation, the selection process will be by school based merit selection process.

Initiative 3—Multiskilling

(a) The parties are committed to allowing employees to be deployed in a way that will best address the needs of the worksite. Employees agree to carry out such duties as are within the limits of the employee's skills, competencies and training. This could include the allocation of specific duties and temporary secondment to other positions in the worksite.

(b) The parties will establish a working party to further review the performance of a wider range of tasks. The concept of multiskilling will be examined in the light of the new initiatives contained in this Agreement and employees will be provided with opportunities for training and development so as to maintain a highly skilled, competent and committed workforce, experiencing job satisfaction and providing a high quality service.

(c) The working party will consider, but not be limited to:

- access to professional development;
- accreditation of training; and,
- the need to retain generic position classifications.

Initiative 4—Professional and Career Development

This clause should be read in conjunction with the Initiative 5—Performance Management of this Clause and with the planned reform initiatives outlined in this agreement.

(a) Objective

(i) The Department and the Union confirm a commitment to professional and career development for all employees. Employees recognise their obligation to maintain and update their skills and the Department recognises its obligation to provide employees with opportunities to maintain and update their skills.

(ii) It is recognised that general staff already work within a multiskilling environment, however the parties will examine areas where greater multiskilling opportunities may be appropriate. Given the new initiatives outlined in this agreement it is agreed that employees will be provided with opportunities for appropriate training and development during school hours.

(iii) Professional and Career Development will be based on a focus on both current and future job needs and career path planning and recognition of each employee's prior learning and building on this through the acquisition of new skill. The parties will develop an enhanced Employee Training and Development Plan during 1996/1997 that will deliver structured functional and developmental training relevant to the business needs of the organisation. It is agreed that accredited training is important to the development of employee skills and that this training shall be accessible wherever practicable.

(iv) Principals will ensure that all employees party to this Agreement have equitable access to Professional Development through the provisions of the School Grant in any school year.

(iv) The provisions of the Public Service Award, Clause 25—Study Leave shall apply to all employees under this Agreement.

Initiative 5—Performance Management

(a) The parties agree to a performance management process which will involve all employees and which will confirm expectations between employees and their Supervisors about professional responsibilities. Performance Management will be linked to worksite outcomes and the Department's Strategic Plan. The Performance Management Agreement will be in accordance with the provisions of the Department's Performance Management Policy.

(b) The objective of the Performance Management Agreement is to:

- enhance the professional development of employees
- assist all employees to understand the role, accountabilities and performance standards that are expected of them
- provide all employees with feedback and constructive support to improve performance and enhance an atmosphere of mutual trust, loyalty and support
- provide employees with appropriate training and development to assist in the achievement of corporate business objectives.

(c) The parties agree that any training which is required to be taken by the employees under the Performance Management Agreement will be fully funded and resourced by the Department.

Initiative 6—School Based Staff Selection Procedures

(a) The parties agree that decisions about staffing are best made with local involvement and are committed to collaboratively implementing local participation in the selection process.

(b) Full implementation of such a process will coincide with like arrangements for teaching staff. School based selection will ensure that the best possible match is made between the needs of the school and the qualities of the staff.

(c) It is important however that in introducing greater involvement by the school that change is gradual and that school selection follows merit and equity principles.

(d) To assist the implementation of school based selection of staff the parties agree to implement the following in this agreement:

- All members of selection panels will be trained in selection process and procedures. Selection panels for general staff vacancies will include a general staff member who is a job content specialist.
- Gender and equity principles will be adhered to. Central Office involvement will continue in the provision of procedural guidelines and in monitoring that school processes follow these guidelines.
- The selection process will comply with standards mandated under the Public Sector Management Act, be managed at the school level according to Public Sector standards, and observe equal opportunity requirements.
- Local selection processes will only occur where a vacancy has arisen due to transfer, promotion, retirement or any other reason constituting a permanent move from the position.

(e) School Staffing Profiles

The parties agree to the development and in the future to a phased implementation of a system, where schools will receive a notional personnel budget allocation for all staff. The development of such a process will occur in parallel with that for teaching staff.

Initiative 7—Community Use of School Facilities

(a) It is Government policy to encourage and support the use of school resources by the wider community. Schools represent a huge investment of community funds and many of the facilities provided at schools are suitable for use by the wider community.

(b) It is acknowledged that encouragement for schools to make their facilities more readily available may result in benefits to both the school and the community. Resourcing and security issues are important to the successful implementation of the CUSF program. Schools will have a Community Use Policy and Principals will be responsible for the management of the community use of their school facilities. Approval to use school facilities rests with the Principal. The Principal may delegate that authority from time to time to another staff member or other nominated representatives such as a member of the P & C or the School Decision Making Group.

(c) The parties are committed to the CUSF and agree that policy and procedures relating to the Management of the Community Use of School Facilities will be developed at school level by the end of the 1996 school year. The parties agree that this policy and procedures will be developed through a collaborative process at the school level and that Registrars will be involved in this process. Registrars will be required to undertake duties in accordance with this agreed policy. The policy and guidelines for the community use of schools will only be implemented in Primary Schools during 1996 where the policy is already operational at the date of registration of this Agreement. Secondary schools will implement CUSF policy during 1996.

(d) As maintenance and operation of CUSF is vested in the Registrar, it is acknowledged that the CUSF process may impact upon workload and responsibility of the Registrar. It is agreed that the responsibility for security of school facilities rests with the person holding the booking and not with a member of the school staff. The Registrar shall have a choice as to whether he/she will undertake on call duties. All on call overtime arising out of the management of the Community Use of School Facilities shall be paid in accordance with the provisions of the Public Service Award 1992.

(e) The operation of the Community Use of School Facilities policy and guidelines will be reviewed during 1996.

Initiative 8—Utilities Management Program

(a) The parties agree that the Registrar, when required by the Principal, will undertake duties associated with the management of the Utilities Management Program. On commencement of the Utilities Management Program in a school, the Registrar will be provided with:

- an introductory workshop;
- three discretionary days; and
- follow up budgeting workshops as necessary

(b) All workshops will be fully funded by the Department

(c) As maintenance and operation of the school accounting system and assistance with preparation of the annual school budget is vested in the Registrar, it is acknowledged that the utilities management process may impact upon workload and responsibility of the Registrar.

Initiative 9—Management of the School Grant

(a) The level of control schools have over their financial resources and facilities will be increased. Where services are contracted out, schools will be responsible for managing the implementation of the contracts and quality of the service provided.

(b) The Department's capital works budget will reflect the Government's commitment to upgrade schools in the future. The Strategic Assets Management Plan will ensure that more funds are provided to supplement the amount available for upgrading existing schools.

(c) The School Grant will not include any significant additional responsibilities for 1996 other than:

- contracted services (some are already included)
- minor works and faults maintenance to $1,000
- computer funding, when available;
- relief teacher allocations;
- management and administrative issues, (eg. North West air conditioning allowance, staff holiday travel allowance), and
- leasing commitments.

(d) The parties will jointly review for 1997 the impact on the workload of the School Grant responsibilities in the context of any future Agreement.

15.—JOINT CONSULTATIVE COMMITTEE

(1) The parties will establish a Joint Consultative Committee for employees covered by the Agreement.

(2) The terms of reference will include, but not be limited to:

- information sharing
- monitoring the impact of new initiatives contained in this Agreement
- ensuring adequate resourcing occurs of schools, district and central office to perform the new initiatives and existing work.
- addressing matters that occur system wide, ie. across schools, or districts or central office and to develop general guidelines where these may lead to greater efficiency and effectiveness,
- recommending changes that may be useful for future Enterprise Bargaining Agreement.

(3) The membership of this group will be:

- 2 CSA delegates from schools;
- 1 CSA delegate from District Offices;
- 1 CSA delegate from Central Office;
- 1 Industrial Officer from CSA;
- 1 Industrial Officer from EDWA;

- Executive Director Schools or nominee;
- Executive Director Human Resources or nominee.

(4) Guidelines for the operation of the Joint Consultative Committee will be developed between the parties.

(5) Work Environment and Work Attendance

The Joint Consultative Committee will establish a working party to examine whether there is a relationship between levels of absenteeism within a work area and the work environment. Work environment factors may be positively or negatively related to work attendance. The parties may need to consider factors including but not limited to:

- physical work environment,
- management style,
- support provided to employees by way of training; and
- resources and the way work is organised.

(6) If work attendance can be seen as dependant on specific factors then a strategy will be developed to address these in a way that enhances employees attendance at work. The parties are committed to the development and implementation of measures to reduce absenteeism in the Department

(7) Workforce Planning

The Joint Consultative Committee will establish a working party to develop policy and processes on Workforce Planning issues arising from the devolution of personnel practices to schools

16A.—GRIEVANCE SETTLEMENT PROCEDURE

The Department and Union recognise that they have different roles and responsibilities. In doing so they also accept the need for a grievance settlement procedure and commit themselves to following this procedure in order that disputes can be settled through consultation and negotiation whenever possible.

(1) Principles

(a) The objective of this procedure is to ensure that grievances raised by employees are resolved in a fair, equitable and prompt manner. The principles of natural justice will apply at all stages of the procedure. Confidentiality will be maintained. This procedure will be followed in accordance with legislative requirements that might otherwise apply.

(b) The grievance should be reported as soon as is practicable after the grievance has arisen so that a resolution can be obtained as close to the worksite and as soon as possible.

(c) The employee/s may request the presence or assistance of recognised union representatives or other person of their choice at any stage of the grievance resolution process.

(d) An employee will not be subject to any form of discrimination or retaliation because they have raised a grievance.

(e) Where the Union/employee believes that the grievance has system wide ramifications, the grievance may be referred directly to the Secretary of the Union and the Director-General of the Department in accordance with clause 16B(2) of this Agreement.

(f) The provisions of this clause do not apply where a current Act or alternative formal procedures exist (ie. Promotion Appeals).

(2) Worksite/Workarea Grievances Procedure

(a) When an employee or group of employees within a worksite consider they have a grievance the matter shall be acted on in accordance with the general principles of Public Service Administration Instruction 1001 (Schedule D) and the provisions of this clause. Subject to the Industrial Relations Act 1979 as amended, any grievance, complaint or dispute, shall be dealt with in the following manner:

(b) Level One—(Direct Work Site/Workarea Level ie. School Level, District Office or Directorate Level)

(i) The employee(s) concerned shall raise the matter with the person or persons who are the source of the complaint. If the matter cannot be resolved at this level then it is to be raised with the employee's line manager. If unable to resolve the matter the line manager shall, within two working days, refer the matter in writing to the most senior workplace officer and the employee(s) shall be advised accordingly in writing.

(ii) The senior workplace officer shall, provide a written response within five working days of the matter being referred. If the senior officer is unable to answer the matter they will refer the matter to the second level of resolution and advise the affected employee(s) in writing.

(iii) Where a grievance directly concerns the manager that would normally respond to the grievance the matter will immediately be referred to the next level supervisor.

(c) Level Two (Out of Direct Worksite)

The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within five days of the matter being originally referred out of the worksite.

(3) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in 2.

(4) If the matter remains in dispute after the above processes have been exhausted either party may refer the matter to Central Office Industrial Relations Directorate for direct resolution with the Union. If the matter remains unresolved either party may refer the matter to the Western Australian Industrial Relations Commission.

16B.—DISPUTE SETTLEMENT PROCEDURES

Any questions, disputes or difficulties arising under this Agreement will be dealt with in accordance with the following procedures:

(1) For worksite/workarea grievances the Union representative and/or employee(s) concerned shall utilise the process in clause 16A(2) of this Agreement.

(2) Where the Union or employee believes that the grievance has system wide ramifications, the grievance may be referred directly to the Secretary of the Union and the Director-General of the Department in accordance with clause 16A(1)(e) of this Agreement. If the matter remains unresolved then either party may refer the matter to the Western Australian Industrial Relations Commission.

(3) If a dispute relates to an alleged ambiguity or uncertainty in this Agreement either party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity or the Commission may act on its own motion to take steps to vary the Agreement.

17—FLEXIBILITY IN WORKING HOURS

This hours provision has been designed to promote and encourage flexible working hours for both the employee and the Department. The concept of monthly hours will enable the organisation to utilise its employee resources efficiently and effectively, whilst permitting employees "time—off" for recreational purposes and to attend to private issues.

(1) Central Office PSA / GOSAC

Clause 16—Hours—PSA/GOSAC will apply, except that:

(a) Flexitime arrangements shall apply except that an officer shall be allowed to extend the meal break between 12 noon and 2.00 pm of not less than 30 minutes but not exceeding 2 hours.

(b) Subject to the prior approval of the supervisor, an officer may be allowed to accrue a maximum of 5 full days flexi leave to be taken in conjunction with annual leave provided that an officer can only have accrued at any one time a maximum of 5 days.

(c) It is the employee's responsibility to arrange to clear accrued hours. Where the employee is unable to clear accrued hours within the financial year in which they accrue due to Departmental requirements, those hours will be paid out by the employer at ordinary rates of pay.

(2) District Offices (PSA / GOSAC) / Registrars (PSA/ GOSAC)

(a) Normal Standard Hours

(i) Except as provided in this clause, the ordinary hours of work shall be 150 hours per four weekly period with an average of 37.5 hours per week to be worked between the hours of 7.00 am and 6.00 pm Monday to Friday.

(ii) The normal hours of work are 7.5 hours per day.

(b) Flexible Hours

(i) An employee may elect, in writing, to vary their starting and finishing times within the spread of hours prescribed in subclause (2)(a) of this clause and to work variable weekly hours.

(ii) Arrangements for working hours are to be agreed between the employee and their supervisor. Arrangements may include establishing parameters to ensure that work area needs are met.

(iii) A maximum of 10 hours per day may be worked where an individual employee agrees, provided that the ordinary hours worked in a week do not exceed 50 hours (subject to pro rata hours for part-time employees).

(iv) Arrangements for working of flexible hours as provided for in this clause shall be subject to the agreement of an employee. No employee shall be coerced into working flexible hours.

(v) Ordinary hours shall be consecutive except for a meal break of at least 30 minutes , provided that an employee shall not be required to work more than five hours consecutively without a break.

(vi) No employee shall be required to recommence work until at least 10 hours has elapsed from the time the previous work has ceased.

(c) Accumulated Hours

(i) Within each four week period, extra hours worked in accordance with subclause (2)(b) of this clause may be accumulated and used at a later date. Hours may be accumulated up to the equivalent of 37.5 hours (maximum) during any four week period, provided that Registrars may accumulate up to 70 hours (maximum).

(ii) Accumulated hours as provided for in subclause (c)(i) hereof may be cleared in either an hourly, daily or weekly composition as agreed between the employee and their supervisor, provided that Registrars shall, as far as practicable, clear their accumulated hours during school holidays.

(iii) Accumulated hours must be cleared in the financial year in which they are accrued. Any accumulated hours not cleared in a 12 monthly period shall be paid at the ordinary rate of pay.

(d) Overtime

(i) A requirement to work more than 7.5 hours in any one working day shall take into account the employee's personal and family responsibilities.

(ii) Overtime provisions shall apply to time worked by direction in excess of 7.5 hours on any one working day or more than 75 hours per fortnight. Overtime provisions shall be in accordance with the provisions of the relevant award.

(iii) All other provisions per Clause 16.—Hours of Duty of PSA and GOSAC shall apply.

(3) EDMOSAC Employees (Ministerial Officers)

Clause 8—Hours of the EDMOSAC award shall apply, except that:

(a) The span of hours is increased to between 7.30 am and 4.30 pm Monday to Friday. Subject to the approval of the Principal and/or the Registrar employees may elect in writing to work in accordance with flexible working arrangements or standard hours prescribed by this subclause.

(b) Normal Standard Hours

(i) Except as provided in this clause, the ordinary hours of work shall be 130 hours per four weekly period with an average of 32.5 hours per week to be worked between the hours of 7.30 am and 4.30 pm Monday to Friday.

(ii) The normal hours of work are 6.5 hours per day.

(c) Flexible Hours

(i) An employee may elect, in writing, to vary their starting and finishing times within the spread of hours prescribed in subclause (b) of this clause and to work variable weekly hours.

(ii) Arrangements for working hours are to be agreed between the employee and their supervisor. Arrangements may include establishing parameters to ensure that work area needs are met.

(iii) A maximum of 9 hours per day may be worked where an individual employee agrees, provided that the ordinary hours worked in a week do not exceed 45 hours (subject to pro rata hours for part-time employees).

(iv) Arrangements for working of flexible hours as provided for in this clause shall be subject to the agreement of an employee. No employee shall be coerced into working the flexible hours.

(v) Ordinary hours shall be consecutive except for a meal break of at least 30 minutes , provided that an employee shall not be required to work more than five hours consecutively without a break.

(vi) No employee shall be required to recommence work until at least 10 hours has elapsed from the time the previous work has ceased.

(d) Accumulated Hours

(i) Within each four week period, extra hours worked in accordance with subclause (c) of this clause may be accumulated and used at a later date. Hours may be accumulated up to the equivalent of 32.5 hours (maximum) during any four week period.

(ii) Accumulated hours as provided for in subclause (i) of this clause may be cleared in either an hourly, daily or weekly composition as agreed between the employee and their supervisor.

(iii) Accumulated hours must be cleared in the financial year in which they are accrued. Any accumulated hours not cleared in a 12 monthly period shall be paid at the ordinary rate of pay.

(e) Overtime

(i) A requirement to work more than 6.5 hours in any one working day shall take into account the employee's personal and family responsibilities.

(ii) Overtime provisions shall apply to time worked by direction in excess of 6.5 hours on any working day or more than 65 hours per fortnight in accordance with the provisions of EDMOSAC.

(f) Review

The parties agree to jointly, through the Joint Consultative Council, review the operation of this clause within 6 months of the registration of this agreement.

(4) TIME OFF IN LIEU (TOIL)— FLEXIBLE HOURS

Adequate records of time worked, time off in lieu and any period of time off shall be maintained by the employee and kept at the work site. Applications for time off in lieu at a school or worksite do not need to be provided to central office. All employees, managers and supervisors are committed to adhering to the intent, spirit and goodwill of this hours of work policy.

(5) CLASS 6 PRIMARY SCHOOLS AND CLASS 6 DISTRICT HIGH SCHOOLS

(a) Registrars may elect to work Public Service Hours in School Terms. A Registrar (Ministerial) employed in a Class 6 Primary School (700 or more students) or a Class 6 District High School (450 or more students) may, by agreement, elect to work the same full-time hours as a Public Service Officer during the school term. The extra hours will be paid at ordinary rates.

(b) The Registrar will not be required to work during the school holidays and will be entitled to the same Leave of Absence arrangements as other Ministerial Officers. Officers cannot be coerced into extending their hours.

(6) REMOTE TEACHING SERVICE

The parties agree that Ministerial Officers may, by agreement with all parties, to meet the needs of remote schools, vary the school year and hours per day to take into account educational, cultural, climate and local factors. The Principal will negotiate school hours and days of attendance and the employees will be consulted and have a choice of undertaking these changes. The total hours worked in any one year will still equal the total hours that would have been worked if the school year had not been varied by this agreement. Total hours to be worked in a year are 1332.5 (41 weeks x 32.5 hours pa)

18.—HIGHER DUTIES ALLOWANCE DURING ANNUAL LEAVE—MINISTERIAL OFFICERS

(1) To meet Departmental needs EDMOSAC employees are at times required to act in Public Service positions in schools. The parties recognise that it is not always practicable for such employees ("relievers") to clear the annual leave entitlement accrued while acting in school Public Service positions on an annual basis.

(2) Where school requirements have prevented a reliever referred to in subclause (1) of this clause from taking annual leave in the year in which it accrues, Clause 14(7)—Higher Duty Allowance of PSA and GOSAC shall not apply and the reliever shall receive Higher Duty allowance for periods of annual leave taken in order to clear the accrued leave, subject to subclause (3) of this clause.

(3) Payment of Higher Duty allowance under this clause shall be determined on a case by case basis and shall be subject to:

(a) application by individual relievers for exemption from clause 14(7) of the relevant award;

(b) such application to be supported by the reliever's direct supervisor confirming that the employee has not been able to clear their leave due to school requirements;

(c) consideration of such application by the Director of Industrial Relations of the Department and by the Union.

(4) Application of this clause is only for the life of this agreement and is without prejudice to further discussions between the parties in relation to any future replacement agreement

19.—PARENTAL LEAVE

(1) Definition

"Employee" includes full time, part time, permanent and fixed term contract employees.

"Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave

(2) Eligibility for Parental Leave

(a) Subject to subclause (8) of this clause, an employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) An application for parental leave shall be in the form approved by the Director-General and supported by a certificate of a registered medical practitioner stating the expected date of birth of the child.

(c) Where the employee applying for the leave is the partner of a pregnant spouse one weeks leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(d) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

(e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(f) Subject to this clause, where both partners are employed by EDWA the leave shall not be taken concurrently except under special circumstances and with the approval of the Director-General.

(3) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Director-General's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

(d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) The employee shall give not less than ten week's notice in writing to EDWA of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave

(b) If the transfer to a safe position is not practicable, the employee may take leave without pay for such period as is certified necessary by a registered medical practitioner.

(6) Replacement Employee

Prior to engaging a replacement employee EDWA shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to EDWA not less than four weeks prior to the expiration of the period of parental leave;

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (5) of this Clause the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant award.

(d) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level with duties similar to that of the abolished position.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental 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 under the relevant award or this agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

20.—FAMILY CARERS LEAVE

(1) Use of Sick Leave

(a) Employees covered by this agreement may with the consent of the Department use up to the equivalent of 5 days per year of accrued sick leave in accordance with this clause to provide care for another person subject to:

(i) the employee being responsible for the care of the person concerned; and:

(ii) the person concerned being a member of their family:

(b) The definition of family shall be the definition contained in the WA Equal Opportunity Act 1984. That is, a person who is related to the employee by blood, marriage. affinity or adoption and includes a person who is wholly or mainly dependant on, or is a member of the household of, the employee.

(c) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

(d) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the nature of the illness of the person concerned

(2) Unpaid Leave for Family Purposes

An employee may elect with the consent of the Department to take unpaid leave for the purpose of providing care to a family member who is ill.

(3) Annual Leave

Notwithstanding the provisions of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.

21.—CEREMONIAL LEAVE

(1) An Aboriginal or Torres Strait Islander employee who is legitimately required to be absent from work for their tribal/ceremonial purposes shall be entitled to take accrued annual leave or leave without pay.

(2) Short leave entitlements may be utilised for such purposes.

22.—ANNUAL LEAVE TRAVEL CONCESSIONS URGENT PERSONAL BUSINESS

The parties agree that employees who have an accrued entitlement to an annual leave travel concession pursuant to Clause 19(10) of the Public Service Award 1992 may use the concession for urgent private business. Employees who do not have an accrued entitlement may use the concession but will be required to agree to return to the location to work for the remainder of the year.

23.—UNION FACILITIES, ACCESS

The Education Department of Western Australia recognises and supports the rights of unions to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on cooperation between the industrial partners based on mutual recognition and respect. Therefore the parties are committed to following the Facilities Agreement 1992 for the life of that Agreement, on the same basis as that agreement currently applies in EDWA.

24.—LONG SERVICE LEAVE

Clauses 21 and 23 of the PSA/GOSAC shall apply, except that:

Employees may take a minimum of ten days in any one period of long service leave. Periods of long service leave must be taken in multiples of 5 days.

25.—SALARY INCREASES

In recognition of the initiatives contained in this Agreement, employees will receive a salary increase of 5.2% payable from 1 January 1996 and a further 2.2% payable from 1 July 1996 in accordance with Schedule B and subject to the achievement of the targets by 1 July 1996 in Schedule C. Employees will not be disadvantaged if targets are not achieved due to factors out of their control.

26.— REPLACEMENT AGREEMENT

The parties agree that the following issues will be considered during negotiations for a replacement Agreement:

- Implementation of CUSF policy in Primary Schools;
- Development of a policy for government officer positions in new schools;
- Broadening the Ceremonial Leave entitlement;
- Annualising leave loading;
- A Facilitation Clause (subject to the outcome of across government discussion with respect to the 3rd $8 safety net adjustment);
- An allowance for officers acting in long term vacancies;
- School Staffing Profiles;
- Review of workload payroll staffing section; and,
- Personnel 2000 workload and resourcing.

27.—SIGNATURES OF PARTIES TO THE AGREEMENT

MINISTER FOR EDUCATION

(Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983)

Jerry Skivinis	Ross David Copeland
[Minister]	[Signature of Witness] 29/3/96

EDUCATION DEPARTMENT OF WESTERN AUSTRALIA

(Public Service Award 1992)

(Government Officers Salaries, Allowances and Conditions Award 1989)

Jerry Skivinis	Ross David Copeland
[Director General	[Signature of Witness] 29/3/96

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INC.

D.A. Robinson	Kristin Anne Uta Berger
	[Signature of Witness] 29/3/96

SCHEDULE A—PRODUCTIVITY

These initiatives relate to the Department's Strategic Plan 1995-97 and should be read in conjunction with the Plan and Clause 12(2)(c) of this Agreement.

(1) Client Surveys

Client surveys are to be conducted within the first six months of this Agreement.

Changes to work practices and specific strategies which are to be implemented to overcome areas of specific need identified from the analysis of the client surveys.

(2) Work Practices

Staff will contribute to maintaining and improving the level of services provided through the review and modification of work practices;

Realignment of Central Office functions will be completed and the structures of District Education Offices reviewed;

Information systems will be upgraded to provide better strategic data for corporate decision making.

(3) The following interactive elements of corporate planning have been developed:

- An annual systematic review;
- An integrated planning cycle, linking the needs and objectives of the Central Office, schools and Government; and,
- A three-year (1996-1998) Strategic Plan to give a clear focus to areas of Education Departmental operations requiring particular attention.

(4) Practices, which enable decisions affecting school staffing to be made in schools, are to be developed and implemented as follows:

- A personnel policy framework and guidelines to assist Principals with personnel management. (December 1996);
- Personnel processes and practices to enable school focussed human resource management in selected schools. (June 1996); and,
- Information systems to support school focussed personnel management (December 1996).

(5) Industrial practices and policies are to be reviewed to promote work site decision making and provide a framework to support an appropriate salary structure and work conditions.

(6) Resource decisions are to be shifted as close to the delivery point as possible:

- Complete installation of the MAZE financial module in participating Primary Schools. (December 1996).
- Facilitate and support training of MAZE demographic modules to Primary Schools. (December 1996).
- Utilities management completed in participating schools in all districts. (December 1996).
- Review current administrative support and management procedures and practices and develop and trial flexible procedures for site management.

(7) Strategies for the support of information and technology are to be established in schools, District Offices and Central Office:

(8) Schools, Districts and Central Office will identify and pilot improved support strategies in the areas of computing and communication technologies. (December 1996).

(9) Support and enable schools to use the technology and information systems for school focussed staff management. (December 1996).

(10) The resource management processes of the Department will be improved to:.

- Incorporate the current school grant, all grants provided centrally, and negotiated transfers of central cost centres, into a financial budget for schools. (by December 1997);
- Develop process to assist management of staffing profiles, workforce planning and resource planning and budgeting in schools. (December 1996);
- Selection and trialing of an accrual accounting system in Central Office;(December 1996);
- Implementation of an accrual accounting system in Central Office; (1996-1997)
- Implement a programme structure in the new Department Accounting System and provide programme reporting facilities for management. (December 1996);
- Incorporate the Management Improvement framework into a systematic review of service delivery and support functions in Central and District Offices.

(11) Quality Improvement/Continuous Improvement

Improvements to Central Office and Schools information systems will be continued to meet management decision-making needs, improve compliance with external reporting requirements, improve information systems to satisfy the needs of system level decision making and develop a process of programme evaluation (during 1996);

A performance management implementation plan will be developed and Central and District Office staff performance agreements will become operational by July 1996;

A quality management process for information systems will be implemented to ensure that all systems development complies with the requirements of Australian Standard AS3563.

The process for assuring quality and improving performance within the Department and the quality of information provided to the community regarding the performance of the Western Australian Government schools system will be improved by;

Establishing and monitoring quality standards for support services and programmes. (by December 1997)

Establishing and implementing a process of ongoing programme and services evaluation. (by December 1997).

Implementing systematic risk management processes to all Central Office and District Office operations. (by December 1996).

A process will be established whereby the learning area Superintendents and the District Superintendents will review system-wide progress in assuring quality curriculum delivery and student performance. (December 1996).

(12) Staffing

The equity of representation of subgroups with departmental staff will be improved through structural changes and improvement in opportunities for career development and training.

- Strategies in the Equal Employment Opportunity plan will be implemented to achieve equitable representation of women and Aboriginal people in management positions in schools, District Offices and Central Office. (December 1996).
- The recommendations of the review of staff management policies will be implemented to remove discriminatory provisions. (June 1996).
- Accountability for equal employment opportunity will be incorporated into the performance management system for all staff. (by December 1997).

The management of staff performance will be improved.

- School promotional positions and Central and District Office staff performance management processes to be commenced. (January 1996).
- School staff performance management processes to be commenced. (by February 1997).
- Streamline the processes for addressing staff performance efficiency. (December 1996).
- Establish a code of conduct for all staff. (June 1996).

PERFORMANCE IMPROVEMENT PLAN

The parties accept that productivity can be achieved by setting higher levels of performance as targets. In this process there is a need to identify barriers to increasing productivity.

Accordingly the parties commit themselves to jointly determining key outcomes in terms of what results are required to be achieved for each major function to be identified.

The parties commit themselves to establishing a Steering Committee under the auspices of the Joint Consultative Council to set goals and design an implementation plan, during the life of this Agreement, for achieving improved productivity and performance by examining:

- Employment conditions;
- Job redesign—skills and tasks;
- Work organisation practices and procedures;
- Reducing duplication and waste
- Use of new technology; and
- Reporting levels.

The Steering Committee will consist of equal number of representatives of the Union and will be resourced by the Department. The Steering Committee will establish working parties at worksites which will operate according to the following principles:

- The working parties can expect that all staff will commit themselves to the analysis of work systems using a systematic and cooperative approach to identify problems and opportunities for improving productivity and performance;
- Employees will examine systems of work to ensure there are no barriers to achieving targets.
- Employees will participate in discussions with management to identify key outcomes;
- Any activities undertaken as part of this analysis, either as a member of a working party or at a workplace shall be in addition to normal workloads;
- An action plan for implementation of initiatives will be developed.

The Steering Committee will develop agreement on changes to implement the action plans. This agreement will include:

- Measures to be developed for each outcome;
- Baseline data to be collected to determine current level of performance;
- A target based on an improvement in baseline data will be agreed between the parties;

This process will commence immediately following registration of this Agreement and will provide a baseline for the measurement of performance for the purposes of the next Agreement.

SCHEDULE B—SALARY SCALES

Public Service Award 1992

Government Officers Salaries, Allowances and Conditions Award 1989

	Current Rate	5.20% 1.1.1996	7.40% 2.2% 1.7.1996
	$	$	$
Level 1			
Under 17 years	10,873	11,438	11,690
17 years	12,707	13,368	13,662
18 years	14,822	15,593	15,936
19 years	17,157	18,049	18,446
20 years	19,267	20,269	20,715
21 years or 1st year of adult service	21,165	22,266	22,755
22 years or 2nd year of adult service	21,817	22,951	23,456
23 years or 3rd year of adult service	22,468	23,636	24,156
24 years or 4th year of adult service	23,115	24,317	24,852
25 years or 5th year of adult service	23,766	25,002	25,552
26 years or 6th year of adult service	24,417	25,687	26,252
27 years or 7th year of adult service	25,166	26,475	27,057
28 years or 8th year of adult service	25,684	27,020	27,614
29 years or 9th year of adult service	26,450	27,825	28,438
Level 2			
1st year	27,367	28,790	29,423
2nd year	28,070	29,530	30,179
3rd year	28,809	30,307	30,974
4th year	29,590	31,129	31,814
5th year	30,407	31,988	32,692
Level 3			
1st year	31,530	33,170	33,899
2nd year	32,405	34,090	34,840
3rd year	33,307	35,039	35,810
4th year	34,233	36,013	36,805
Level 4			
1st year	35,503	37,349	38,171
2nd year	36,498	38,396	39,241
3rd year	37,522	39,473	40,342
Level 5			
1st year	39,494	41,548	42,462
2nd year	40,827	42,950	43,895
3rd year	42,212	44,407	45,384
4th year	43,649	45,919	46,929
Level 6			
1st year	45,960	48,350	49,414
2nd year	47,531	50,003	51,103
3rd year	49,157	51,713	52,851
4th year	50,893	53,539	54,717
Level 7			
1st year	53,555	56,340	57,579
2nd year	55,397	58,278	59,560
3rd year	57,401	60,386	61,714
Level 8			
1st year	60,658	63,812	65,216
2nd year	62,991	66,267	67,724
3rd year	65,884	69,310	70,835
Level 9			
1st year	69,497	73,111	74,719
2nd year	71,938	75,679	77,344
3rd year	74,722	78,608	80,337
Class 1	78,932	83,036	84,863
Class 2	83,142	87,465	89,390
Class 3	87,350	91,892	93,914
Class 4	91,560	96,321	98,440
SALARIES SPECIFIED CALLINGS			
Level 2/4			
1st year	27,367	28,790	29,423
2nd year	28,809	30,307	30,974
3rd year	30,407	31,988	32,692
4th year	32,405	34,090	34,840
5th year	35,503	37,349	38,171
6th year	37,522	39,473	40,342

Education Dept Ministerial Officers Salaries Allowances and Conditions Award 1983

School Assistant Level 1 (Ministerial Officers			
1st year (21 years)	17,108	17,998	18,394
2nd year	17,635	18,552	18,960
3rd year	18,161	19,105	19,526
4th year	18,684	19,656	20,088
5th year	19,211	20,210	20,655
6th year	19,737	20,763	21,220
7th year	20,342	21,400	21,871
8th year	20,761	21,841	22,321
9th year	21,380	22,492	22,987

	Current Rate $	5.20% 1.1.1996 $	7.40% 2.2% 1.7.1996 $
School Assistant Level 2 (Ministerial Officers)			
1st year	22,122	23,272	23,784
2nd year	22,690	23,870	24,395
3rd year	23,287	24,498	25,037
4th year	23,918	25,162	25,715
5th year	24,579	25,857	26,426
School Assistant Level 3 (Ministerial Officers)			
1st year	25,487	26,812	27,402
2nd year	26,194	27,556	28,162
3rd year	26,923	28,323	28,946
4th year	27,672	29,111	29,751

	Current Rate $	5.20% 1.1.1996 $	7.40% 2.2% 1.7.1996 $
School Assistant Level 4 (Ministerial Officers)			
1st year	28,698	30,190	30,854
2nd year	29,502	31,036	31,719
3rd year	30,330	31,907	32,609
School Assistant Junior			
Under 17 years	8,789	9,246	9,449
17 years	10,271	10,805	11,043
18 years	11,981	12,604	12,881
19 years	13,868	14,589	14,910
20 years	15,574	16,384	16,744

SCHEDULE C—TIMEFRAMES FOR INITIATIVES TO BE IMPLEMENTED

Initiatives	On Registration of the Agreement	By 1 July 1996	By 31 December 1996
Personnel 2000		Live in up to 85 schools	Live in up to 260 schools
Personnel Policy Framework (Schedule A—para 4)		Personnel processes/practices selected schools	Personnel policy framework and guidelines and supporting information systems
Relocation System	Working party to review system	Implementation of recommendations • awareness of transfer • priority for employee transfer • resourcing to ensure up to date lists • endorsement of system	
Multiskilling	Working party established	Working party report/ commencement of implementation	
Professional and Career Development		Plan developed	
Performance Management		Implemented for senior officers (Level 8 and above) by term 3	Working towards implementation for all other officers by 31.12.97
Selection School Based Staff	All staff locally selected	Selection panel training commenced	Ongoing training
Community Use of School Facilities	Already implemented in some schools	Development of school policy commenced	Policy in all schools and implemented in all Secondary schools
Utilities Management Program	Offered in 3 N West districts, 5 Metro Districts, 3 Country	Offered in up to 26 Districts	Offered in all Districts
Management of School Grant	Currently implemented in all schools		
Joint Consultative Committee	Committee established	Establishment of Working Parties	Working Party Reports/ commence implementation
Flexibility Working Hours	Implementation		
Grievance Procedures	Implementation		
Performance Improvement Plan		Working parties established	Working Party Reports/ commence implementation
Client Surveys		Conducted	
MAZE Financial Model			Complete installation/support training in participating primary schools
MAZE Demographic Module			Facilitate and support training of MAZE demographic modules to primary schools

SCHEDULE D—ADMINISTRATIVE INSTRUCTION 1001

GRIEVANCE RESOLUTION

OBJECTIVE

To ensure that grievances raised by public servants are resolved in a fair, equitable and prompt manner.

DEFINITION

Grievance resolution is the process by which solutions are sought for an employee's concerns about, or perceptions of, unnecessary or unjustified personal hardship, detriment or annoyance resulting from management's actions or decisions in applying any personnel management system which directly affects the employee.

LEGISLATIVE BASE

Public Service Act Section 14(2).

PRINCIPLES

1 Grievances should be resolved as informally and quickly as possible by the parties directly involved.

2 When grievances cannot be resolved informally by the persons directly concerned, a formal grievance process should be provided.

3 Confidentiality should be maintained at all times in the resolution of the grievance.

4 The principles of natural justice should apply in the resolution of a grievance:
- all parties to a grievance should have the opportunity to put their cases and have them considered;
- any allegation made against an employee should be made known to that employee;
- all investigations and decisions must be made by persons who are impartial and disinterested;
- an employee should be given the opportunity to comment on the possible bias of any other person involved in the grievance resolution process;
- employees should feel confident that they will not suffer any discrimination as a result of using the grievance resolution process.

5 Information relating to the grievance and its resolution should be freely available to those involved.

6 Management should endorse the grievance resolution process and accept an employee's right to participate in the decision making process.

STANDARDS

1 Each agency shall establish a formal grievance resolution process.

2 The grievance resolution process shall be well publicised on a continuing basis within the agency, and information about it included in induction material for new employees.

3 The grievance resolution process shall include a statement of the management's commitment to the principles of grievance resolution.

4 Managers should initially attempt to resolve grievances through an informal process; only when this is not successful, or it becomes evident that it will be an unreasonable lengthy process, should the formal process be used.

5 Clear time frames for the resolution of grievances by the agency's internal process should be established. It is suggested that these do not exceed two weeks for informal processes and three months for formal processes. Time frames should also be established for each phase of the process.

6 Agencies must designate and provide continuing support to grievance resolution officers who will:
- include at least one male and one female;
- be trained in the effective resolution of grievances;
- be of suitable character and of sufficient status within the agency to give credibility to the grievance resolution process and the officer's recommendations.

7 Any agency with non-metropolitan offices or outposted employees should ensure that its processes meets the needs of staff in those locations, eg mechanisms to involve staff from other agencies in the region may be needed in order to ensure impartial investigating officer(s).

8 Where a grievance involves an equal opportunity issue, the grievance officer(s) should, after obtaining the permission of the aggrieved employee, consult with a representative of the equal opportunity group concerned. If requested by the aggrieved employee, that representative should be involved in the resolution process.

9 Management should act on decisions expeditiously.

10 Employees should be made aware of alternative actions they may take if the internal grievance resolution process does not resolve an issue to their satisfaction. These may include putting their case to the Equal Opportunity Commission, the Parliamentary Commissioner for Administrative Investigations, the Industrial Relations Commission or the Office of Merit Protection.

11 Where an officer has a complaint against his or her treatment within an agency the officer may lodge the grievance with the Office of Merit Protection through the Assistant Commissioner (Equity), provided that the due process of the agency's grievance resolution system has been exhausted.

RECORD KEEPING STANDARDS

1 When the agency's formal process is used to resolve a grievance, the process should be documented in a report from the investigating officer to the Chief Executive Officer and should include the following information:
- details of the grievance;
- action taken in investigating the matters;
- records of any interviews;
- facts established;
- recommendations for action;
- suggested reply to the officer;
- the decision of the Chief Executive Officer (or delegate);
- any correspondence that may result from further action (such as an approach to the Office of Merit Protection).

2 All documentation relating to the grievance should be kept securely, under confidential cover, in a file specifically for grievance resolution reports, which is to be held only by the grievance resolution officer or other designated officer.

3 The documentation relating to the resolution of a grievance should be destroyed five years after completion of action.

STANDARDISED DATA REQUIREMENT

There is no requirement for data relating to the grievance resolution process to be maintained in an electronically transmissible form.

PROCESS

Each agency should develop and implement a grievance resolution process that meets its own need but is based on the principles and meets the standards described in this document. The Public Service Commission and the Department of Productivity and Labour Relations will provide assistance if required.

RELATED POLICIES OR LEGISLATION

Circular to CEOs 12/85: "Sexual Harassment Policy Statement".

"Guidelines for Resolving Sexual Harassment Grievances" Public Service Commission—April 1991.

Administrative Instruction 1001 is not to be applied in cases of alleged sexual harassment. The above documents remain current policy for such cases.

SCHEDULE E—APPROXIMATE NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

It is estimated that the number of employees who will be covered by this Agreement will be approximately three thousand, six hundred and sixty (3,660).

EQUAL OPPORTUNITY COMMISSION ENTERPRISE BARGAINING AGREEMENT 1996 No. PSA AG 120 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated and Others

and

Equal Opportunity Commission.

No. PSA AG 120 of 1996.

Equal Opportunity Commission Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR COMMISSIONER R.N. GEORGE.

14 May 1996.

Order.

HAVING heard Ms B. Branson on behalf of the Applicant and Ms M. White on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Equal Opportunity Commission Enterprise Bargaining Agreement 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 31 January 1996.

(Sgd.) R. N. GEORGE,

[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Equal Opportunity Commission Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Award
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 SEP
11. Objectives and Principles
12. Productivity Measurement and Improvement
13. Salary Rates
14. Hours of Work
15. Long Service Leave
16. Sick Leave
17. Annual Leave
18. Parental Leave
19. Special Purpose Leave
20. Part-Time Employment
21. Working from Home
22. Grievance Procedures
23. Dispute Settlement Procedure
24. Further Issues for Negotiation
25. Numbers of Employees Covered by this Agreement
26. Signatures of Parties to this Agreement

Appendix 1—Salary Schedule
Appendix 2—Past Productivity Acknowledged in this Agreement
Appendix 3—Initiatives for Productivity Improvement
Appendix 4—Productivity Improvement Plan

3—SCOPE OF THE AGREEMENT

This agreement applies to all employees of the Commissioner for Equal Opportunity employed pursuant to the provisions of the Public Service Award.

4.—PARTIES TO THE AGREEMENT

This agreement is made between the Commissioner for Equal Opportunity and the Civil Service Association.

5.—DEFINITIONS

"Agreement": the Equal Opportunity Commission Enterprise Bargaining Agreement 1996

"Award": the Public Service Award 1992

"Commission": the office of the Commissioner for Equal Opportunity

"Commissioner": the Commissioner for Equal Opportunity

"Employee": for the purpose of this agreement, someone who is referred to at Clause 3—Scope

"Equal Opportunity Commission": the office of the Commissioner for Equal Opportunity

"Family": those to whom an employee is related by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on a member of a household.

"Government": the State of Western Australia

"Public Service Award": Public Service Award 1992

"Spouse": a person to whom an employee is married or who lives with the employee in a de facto relationship

"Union": Community and Public Sector Union / Civil Service Association of Western Australia

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This agreement will operate from the date of its registration until 30 June 1997. Salary increases payable under this Agreement will be backdated to three months before the date of effect of this Agreement.

(2) The parties will review this agreement six months prior to the expiration of this agreement to commence negotiations for a new agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(4) The pay quantum achieved as a result of this agreement will continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.

(5) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the Western Australian Industrial Relations Commission.

(6) Agreement of the Union is subject to confirmation by means of a ballot of its members.

(7) Agreement by the Commission is subject to confirmation by Cabinet.

(8) If the vote by the members of the Union dies not support the Agreement, both parties agree to withdraw the application.

7.—NO FURTHER CLAIMS

(1) For the period of this agreement there will be no further salary increases sought for the terms of this agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future Safety Net Adjustments shall be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this agreement. Future Safety Net Adjustments shall not increase the rates of pay prescribed in Appendix 1.

8—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted wholly in conjunction with the provisions of the Public Service Award and relevant agreements which apply to the parties bound to this

agreement. In the case of any inconsistencies, this agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

(1) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Equal Opportunity Commission and the Community and Public Sector Union/Civil Service Association of Western Australia.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the Restructuring and Efficiency Principle of 1987 and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this agreement.

11.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are:

(1) (a) To increase efficiency and productivity of the Commission through:

- increased customer service for existing services
- continuous improvement of all work practises
- new initiatives to enhance the services provided

(b) To promote the development of trust and motivation and to continue to foster enhanced employee relations

(c) To facilitate greater flexibility in decision making and allocation of human and other resources

(d) To promote increases satisfaction from jobs and secure employment opportunities

(e) To develop and pursue changes on a continuing cooperative basis by using participative practises

(f) To promote health, safety, welfare and equal opportunity for all employees

(2) Performance indicators will be developed and implemented for subclause (1) during the life of the agreement.

12.—PRODUCTIVITY MEASUREMENT AND IMPROVEMENT

(1) Mission and Objectives of the Equal Opportunity Commission

The mission of the Equal Opportunity Commission of Western Australia is to ensure that people in the Western Australian community are treated on their merits, free from assumptions based on prejudice or unlawful discriminatory behaviour.

The objectives the Equal Opportunity Commission are to encourage recognition and acceptance within the community of equality of opportunity and human rights, and to provide an avenue of redress for unlawful discriminatory behaviour. The strategies for achieving these objectives are—

(a) by raising awareness of the provisions of the *Equal Opportunity Act 1984* and human rights in the community through the dissemination of relevant and appropriate information.

(b) by investigating and attempting to conciliate complaints that fall within the jurisdiction of the *Equal Opportunity Act 1984* and other legislation administered by the Commissioner.

(c) by identifying and encouraging the elimination, as far as possible, of discriminatory practices and policies.

(d) by acting as a source of referral on discrimination and human rights related matters.

(2) Strategies and Initiatives Developed to Achieve Objectives

The parties have been and continue to be committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Equal Opportunity Commission.

These initiatives include those which have already been implemented, those which will enhance existing programs and new initiatives which will further develop the effectiveness of the Equal Opportunity Commission. An Operational Plan that identifies these initiatives is being developed. This Plan will be subject to modification from time to time due to external or unforeseen factors and continuous improvement in the provision of services.

The parties are committed o the implementation of the Operational Plan and flexibility in modifying the Plan on a participative basis when required.

Where the Operational Plan identifies existing measures and standards of performance, these will be reviewed during the life of this agreement. These reviews will assist in identifying future productivity improvements. Where such measures and standards are not yet in place they will be developed and be used for identifying future productivity improvements.

The Commission's program as identified in its performance indicators is to be directed towards achievements in the Commission's program of equality of opportunity which incorporates:

(1) Community Education and Legislative Reform

(2) Redress—Law, Jurisdiction and Practice.

The Commission's services come into the broad categories of:

- Community Education
- Enquiries
- Library
- Investigation and Conciliation
- Policy
- Systems
- Legal
- Corporate Services
- Corporate Strategies

It is acknowledged that while the above categories reflect organisational units within the Commission, it is also recognised that activities from difference organisational units can contribute to each of these categories of services. Therefore, each employee will contribute to service delivery in a range of areas.

During the life of this agreement the parties commit themselves to a program of customer service that will not only meet but exceed the requirements of the Government's Customer Focus Policy. This will involve continuation and improvement of existing customer service programs, and development and progress towards implementation of new customer service programs.

(3) Past Productivity, Workplace Reform Program and Productivity Improvement

The parties recognise that since 1991 there have been changes to work practices that have enhanced productivity in achieving a wide range of productivity related outcomes. This past productivity improvement was achieved while maintaining or increasing the volume of normal activities across all areas of the Commission. Details of the Past Productivity acknowledged in this Agreement are shown in Appendix 2.

This Agreement commits the parties to the implementation of a Workplace Reform Program that will increase productivity. For all existing services, standards and measures of customer service will be developed over the life of the Agreement. The details of the Workplace Reform Program are shown in Appendix 3.

The Agreement requires the parties to commit themselves to a Productivity Improvement Plan (see Appendix 4) that will see the development of systems and other mechanisms for productivity improvement that can be used as the basis of a later agreement. Over the life of this agreement new initiatives, in addition to those detailed in the Workplace Reform Program, will be developed. Some of these additional initiatives will be implemented in full, others will commence implementation with a view to their continuation into the next agreement. The initiatives will be developed on a participative

basis with appropriate staff involvement. During the life of the agreement a formal program of continuous improvement in processes across the Commission will be developed. It may also be necessary from time to time to revise the planned new initiatives and reallocate priorities.

In some existing programs where standards and measures already exist, Performance Targets have been identified. The parties commit themselves to working towards the anticipated improvement to the best of their ability. Where external factors have influence on the attainment of these improvements, it may be necessary that the expectations be adjusted from time to time. The Performance Targets and conditions that apply to them are specified in Appendix 4—Productivity Improvement Plan.

The Agreement uses four key categories of productivity initiatives: These are:

1. Increased range of services
2. Organisational planning, performance measurement and management
3. Development of and commitment to standards
4. Improved flexibility and efficiency.

The details of the Workplace Reform Program and Productivity Improvement Plan are listed in Appendices 3 and 4.

13—SALARY RATES

(1) Salary increases will be payable on the basis of implementation and continued co-operation in implementation of those improvements in productivity and/or work practice changes outlined in Clause 12.

(2) The salary rates payable under this agreement are prescribed in Appendix 1—Salary Schedule. This Schedule shall be backdated to 31 January 1996.

(3) Payment of the salary increases proposed for 1 July 1996 and 1 January 1997 are conditional on the meeting of the project outcomes and performance targets specified in Appendix 4. The Commissioner will audit progress towards these targets on 30 June 1996, 31 December 1996 and 30 June 1997 and recommend the payment or withholding of the salary increases.

(4) Payment of each of the salary increases proposed for 1 July 1996 and 1 January 1997 will be calculated on the basis of 0.5% for meeting the milestones specified for the project based improvements, 0.5% for meeting the targeted reductions in time for complaint handling and 0.5% for the targeted improvements in customer satisfaction.

(5) Should a target specified for 31 December 1996 be attained by June 1996, the salary increase attributable to the attainment of this target will be brought forward to 1 July 1996.

(6) Should a target specified for 30 June 1996 or 31 December 1996 not be attained until after that date, the salary increase attributable to the attainment of this target will be postponed until the audit date at which it is attained.

(7) Should the targets specified in Appendix 4 be exceeded, then the parties will negotiate to include an appropriate productivity bonus for payment at the commencement of the next Agreement.

14.—HOURS OF WORK

(1) It is agreed that the provision of flexible working hours will take account of customer needs, business flexibility and the preferences of employees.

(2) The hours of work will be the same as per the Award with the following exceptions:

(a) Full-time employees will work an average of 37½ hours per week over a 13 week cycle of 487.5 hours. Part-time employees will work a pro rata amount of hours over a 13 week cycle.

(b) Flexi-leave will be available on an hourly basis up to a maximum of the number of credit hours available. With the Commissioner's approval an employee may, in exceptional circumstances, go into debit in taking flexi-leave.

(c) Flexi-leave can be taken in blocks up to 6 days at a time subject to organisational convenience subject to the following proviso. Flexi-leave in blocks in excess of 2 days will require the Commissioner's approval.

(d) Flex-time and flexi-leave will be used in preference to overtime. Overtime will require the Commissioner's prior approval and such approval will only be given where flex-time is not practicable.

15.—LONG SERVICE LEAVE

Long service leave entitlements will be as per the award with the following exceptions:

(a) Long service leave may be accessed by employees in periods of not less than the equivalent of 1 week on full pay.

(b) The Commissioner will manage long service leave so that for employees taking long service leave, an average of one week of the leave for every 13 weeks of long service leave taken will not be backfilled through the employment of external relief staff.

16.—SICK LEAVE

Sick leave entitlements will be as per the award with the following exceptions:

(a) in the form of 12½ days sick leave per annum on full pay. There shall be no entitlement to further sick leave on half pay.

(b) employees are entitled to take sick leave to care for a sick family member. This can be taken from up to 2½ days' of the employee's pro rata sick leave entitlement and/or from any accrued sick leave entitlements.

17. —ANNUAL LEAVE

Annual leave entitlements are as per the award with the following exceptions:

(a) By agreement in writing by the parties and subject to the Commission's operational requirements, annual leave may be taken at half the normal rate of pay and hence for double the period of time.

(b) annual leave loading will be paid as lump sum on the first pay period on or after 1 December each year.

18.—PARENTAL LEAVE

(1) Definition

(a) "Employee" includes full-time, part-time, permanent and fixed term contract employees.

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave

(2) Eligibility for Parental Leave

(a) an employee is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse/partner

(b) where the employee applying for the leave is the partner of a pregnant woman, one week's unpaid leave may be taken at the birth of the child concurrently with parental leave taken by the partner.

(c) an employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's unpaid leave. The employee may take any paid leave entitlement in lieu of this leave.

(d) an employee adopting a child who is not the child of the employee's spouse/partner shall be entitled to three weeks unpaid parental leave at the time of the adoption.

(e) a further period of unpaid parental leave up to a maximum of 52 weeks to care for a child after adoption can be taken except where the child is the child of the employee's spouse/partner.

(f) subject to (b) of this clause where both partners are employed by the Commissioner for Equal Opportunity the leave shall not be taken concurrently except under exceptional circumstances and with the approval of the Commissioner for Equal Opportunity.

(3) Other Leave Entitlements

(a) an employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave.

(b) an employee may extend the maximum period of parental leave with a period of annual leave, long service leave or leave without pay subject to the Commissioner's approval.

(c) an employee on parental leave is not entitled to paid sick leave other paid award absences excluding annual leave and long service leave.

(d) where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) where practical the employee shall give not less than ten weeks' notice in writing to the Commissioner of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

(b) an employee may at any time during the period of leave request a reduction or extension of the period stated in the original application by giving four weeks' written notice (or a lesser period as agreed by the employer).

(5) Transfer to a Safe Job

(a) where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

(b) if the transfer to a safe position is not practicable, the employee may take leave for such a period as is certified necessary by a registered medical practitioner.

(6) Replacement Employee

(a) prior to engaging a replacement employee the Commissioner shall inform the person of the temporary nature of the employment and the entitlements relating to return to work or request for variation of leave of the employee on parental leave.

(7) Return to Work

(a) an employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee as transferred to a safe job pursuant to subclause (5) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(b) an employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with part-time provisions.

(c) where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

(8) Effect of Leave on Employment Contract

(a) Fixed Term contract

An employee for a fixed term contract shall have the same entitlement to Parental Leave, however the period of leave granted shall not extend beyond the term of that contract

(b) Continuous Service

Absence on Parental 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 under the relevant award or this agreement.

(c) Termination of Employment

An employee on Parental Leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

19.—SPECIAL PURPOSE LEAVE

The following provisions shall replace Short Leave provisions in the relevant parent award.

(1) An employee shall be entitled to three days Special Leave each year. Any unused portion of this leave may accumulate from year to year up to a maximum of six days. Special Leave will be available on an hourly basis and all or part of the available leave may be taken for any one event.

(2) The leave may be used in the following circumstances :

(a) to workers who are legitimately required to be absent form work for their tribal/ceremonial purposes. Such ceremonial leave will include leave to meet the employee's customs, traditional law and to participate in ceremonial customs. It would be available to, but not limited to, Aboriginals and Torres Strait Islanders.

(b) to attend to other urgent business.

(c) for bereavement purposes on the death of a family member. An employee can utilise up to 2 days paid leave in the event of such a death. The 2 days need not be consecutive but cannot be taken during a period of any other kind of leave. A request for such leave must be made as soon as possible and include the expected time away from work. If requested, reasonable proof must be provided by the employee of the death and the relationship between the employee and the deceased.

(3) Special leave will be approved at the discretion of the employer and employees may be required to provide information to establish sufficient cause for the requested leave.

20.—PART-TIME EMPLOYMENT

Part time employment will be in accordance with the award provision except that it may be for any number of hours up to 37½ hours per week. All entitlements will be on a pro rata basis based on the average hours worked per week by the employee.

21.—WORKING FROM HOME

This will be available at the employee's request subject to :

(a) the work being suitable for carrying out at home

(b) adequate health and safety requirements being met

(c) the quality and quantity of work undertaken can be demonstrated

(d) provision of appropriate equipment can be negotiated

(e) the arrangement is cost neutral for the Commission.

22.—GRIEVANCE PROCEDURES

In the event of any proposed change in employment conditions, employee grievance or other dispute arising, other than matters associated with the interpretation and implementation of this agreement, the parties being committed to the principles of consultation and conciliation agree to follow the procedures set out hereunder:

(1) The parties further agree that all grievances shall be resolved as quickly as possible.

(2) Procedure for resolution of grievances and settlement of disputes:

(a) the employee/s and the employee's supervisor shall confer, where appropriate, and clearly identify the facts and, where possible, resolve the issue within 5 working days.

(b) if not resolved, or if it is inappropriate for the employee/s to approach their supervisor directly, the employee/s [and if the employee wishes, the union representative or other nominee of the employee], the supervisor and the relevant manager shall confer and, where possible, resolve the issue.

(c) if not resolved, or if it is inappropriate for the employee/s to directly approach their manager, the employee [and/or should the employee wish, a union representative or other nominee of the employee] shall confer with the Commissioner and, where possible, resolve the issue.

(d) at any stage of this process relevant human resource management advice may be sought by either party.

(e) if the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

(3) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudice as to the final settlement by the continuation of work in accordance with this procedure.

(4) Nothing in this clause shall prevent the application of any grievance or dispute resolution processes required by legislation such as Occupational Safety and Health legislation and reviews of breach of standards under the Public Sector Management Act.

23.—DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this Agreement will be dealt with in accordance with the following procedures:

(1) the union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a union representative.

(2) if the matter is not resolved within 5 working days following the discussion in accordance with subclause 1 hereof the matter shall be referred by the union representative to the Commissioner for Equal Opportunity or her nominee for resolution.

(3) if the matter is not resolved within 5 working days of the union representative's notification of the dispute to the Commissioner for Equal Opportunity it may be referred by either party to the Western Australian Industrial Relations Commission.

24.—ISSUES FOR FURTHER NEGOTIATION

(1) Parties may negotiate variations to the provisions of this agreement to meet the needs of an employee or employees or the Commission in the event of special or unforeseen circumstances arising. Any variation must be by mutual agreement.

(2) During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. These may form the basis of future agreements.

25.—NUMBERS OF EMPLOYEES COVERED BY THIS AGREEMENT

The number of employees covered by this Agreement is 30.

26.—SIGNATURES OF PARTIES TO THIS AGREEMENT

JUNE WILLIAMS Date:
Commissioner for Equal Opportunity

DAVID ROBINSON Date:
General Secretary
Civil Service Association of WA (Inc)

APPENDIX 1—SALARY SCHEDULE

Level		At 31 January 1996	At 1 July 1996*	At 1 January 1997*
Level 1	under 17	11417	11588	11762
	17	13342	13542	13746
	18	15563	15797	16033
	19	18015	18285	18559
	20	20230	20534	20842
21 or 1st year		22223	22557	22895
22 or 2nd year		22908	23251	23600
23 or 3rd year		23591	23945	24304
24 or 4th year		24271	24635	25004
25 or 5th year		24954	25329	25709
26 or 6th year		25638	26022	26413
27 or 7th year		26424	26821	27223
28 or 8th year		26968	27373	27783
29 or 29th year		27773	28189	28612
Level 2	1	28735	29166	29604
	2	29474	29916	30364
	3	30249	30703	31164
	4	31070	31536	32009
	5	31927	32406	32892
Level 3	1	33107	33603	34107
	2	34025	34536	35054
	3	34972	35497	36029
	4	35945	36484	37031
Level 4	1	37278	37837	38405
	2	38323	38898	39481
	3	39398	39989	40589
Level 5	1	41469	42091	42722
	2	42868	43511	44164
	3	44323	44987	45662
	4	45831	46519	47217
Level 6	1	48258	48982	49717
	2	49908	50656	51416
	3	51615	52389	53175
	4	53438	54239	55053
Level 7	1	56233	57076	57932
	2	58167	59039	59925
	3	60271	61175	62093
Level 8	1	63691	64646	65616
	2	66141	67133	68140
	3	69178	70216	71269
Level 9	1	72972	74066	75177
	2	75535	76668	77818
	3	78458	79635	80829

*These salary rates are conditional on the attainment of productivity improvements specified in Clause 13.—Salary Rates of this Agreement.

APPENDIX 2 PAST PRODUCTIVITY—all of these initiatives were fully implemented prior to 1 January 1996 and continue to be applied on an ongoing basis

Increased range of services	
Initiatives	*Collective outcomes of the initiatives*
FOI statement and process	Improved general community awareness of EO issues and avenues of redress
Accommodating changes in legislation	
Development of information materials for people with impaired sight	Compliance with new legislation and government procedures
Development of information materials for people from non-English speaking backgrounds	
Advertisements for broadcasting on community information radio with a target audience of people with impaired sight	Improving awareness of EO in large private sector organisations and creating opportunities to work with these organisations to reduce discrimination
Annual calendar with an Aboriginal theme target to Aboriginal people	Improving awareness of EO amongst current and future media professionals
Increased categories in annual media awards	Improved awareness of EO issues and avenues of redress amongst particularly disadvantaged communities with special communication needs eg people with disabilities, Aboriginals, people from non-English speaking backgrounds
Development of training packages on the issue of sexual harassment for corporate clients	
Murdoch University students producing EOC's newsletter	

Organisational planning, performance measures and management	
Initiatives	*Collective outcomes of the initiatives*
Review of services, setting benchmark customer satisfaction levels and implementation of recommendations of Attorney General's review New guidelines for complainants and respondents Upgrading of database with direct data entry by Enquiries Officers. Information Technology Plan developed.	Enables service delivery to be planned, targeted and delivered according to client needs. Introduces standards for measuring performance and professional conduct to better meet the needs of clients. New procedures give officers greater individual responsibility and autonomy enabling them to be more responsive to individual clients.
Development and commitment to standards	
Initiatives	*Collective outcomes of the initiatives*
Customer Service Charter developed. Information Technology Code of Conduct developed.	Greater focus on client needs Ensures appropriate protocols and ethical standards are followed thus promoting values of confidentiality, efficiency and protection of the integrity of the database.
Improved flexibility and efficiency	
Initiatives	*Collective outcomes of the initiatives*
Organisational restructure Upgrading office automation	Enhanced client satisfaction by reducing perceptions of conflict of interest between legal and conciliation staff. Creation of Enquiries Unit enables enquiries to be dealt with more promptly improving direct service delivery and raising client satisfaction. Improved office automation enables more efficient production of documents so that matters can be dealt with more quickly.

APPENDIX 3—WORKPLACE REFORM PROGRAM

Increased range of services		
Initiative	*Outcome*	*Implementation*
Handling of complaints and education for -Disability Services -racial vilification	An avenue of redress is available in these areas	Procedures in place November 1995. Ongoing implementation
Charging fees for EOC services in community education	Increased training which would otherwise not be resourced and thus not provided	Procedures in place February 1996 Ongoing implementation
Outreach program to raise awareness and access to EOC services for Aboriginal and other remote communities	Improved customer service by providing services in a location and environment better suited to clients	Procedures in place February 1996 Ongoing implementation
Organisational Planning, Performance Measures and Management		
Initiative	*Outcome*	*Implementation*
Planning cycle	Maximise program outcomes within available resources	Draft framework in place at commencement of Agreement
Implementation of a client satisfaction survey	Improved customer satisfaction with and confidence in the complaint handling process, and improved equal opportunity policies due to more positive attitudes from respondents	Systems to survey clients in place at 1 January 1996. Ongoing surveys for continuous improvement of services commenced 1 January 1996.
Timelines for monitoring progress of complaints	Reduced times to finalise complaints leading to reduced costs, greater chance of conciliation, improved customer satisfaction	Monitoring of timelines commenced in trial phase October 1995. Finalised system for monitoring timelines in place from start of Agreement and ongoing monitoring commenced.
Survey of private sector employers about their EO awareness	Enables education programs to maintain their relevance and cost effectiveness	Survey completed April/May 1996. Preliminary results available for modification of programs based on survey results on ongoing basis from commencement of Agreement.
Extension of EOC databases	Better planning, identification and monitoring of performance targets	Commenced 1 January 1996 and continuing on ongoing basis
Development and commitment to standards		
Initiative	*Outcome*	*Implementation*
Reduction in time to handle written enquiries from 6 to 4 weeks	Increased levels of client satisfaction and faster resolution of issues	System developed and ongoing implementation from start of Agreement
Reduced maximum time for - FOI from 37 to 21 days - Ministerials from 3 weeks to 1 week - Parliamentary Question from 3 days to 1 day	Raise standards of service to clients	System developed and ongoing implementation from start of Agreement
Meet requests for pamphlets within 2 days	Raise standards of service to clients	System developed and ongoing implementation from start of Agreement

Improved flexibility and efficiency		
Initiative	*Outcome*	*Implementation*
Specialist line managers also manage corporate service functions	Saving cost of employing senior level corporate services manager	System developed and ongoing implementation from start of Agreement
Library open during lunch hours	Improved client service	System in place and operational on ongoing basis from 1 April 1996
Restructure of Corporate Services	Enables resources to be diverted to direct client service delivery.	Restructuring finalised early 1996 and officers undertaking revised duties on ongoing basis.
Upgrading office automation - Windows and Word 6 - on-line forms and documents	More cost effective administration systems.	Implementation of Windows and Word 6 completed January 1996 and ongoing use of more efficient systems from then. Start of development of on-line forms from January 1996 and progressive implementation of ongoing use.
Outsourcing of some corporate service functions to Ministry of Justice	More cost effective administration systems.	Progressive expansion of outsourcing from commencement of Agreement including various human resource, finance and contracts functions.

APPENDIX 4—PRODUCTIVITY IMPROVEMENT PLAN
PART 1—PERFORMANCE TARGETS

Organisational Planning, Performance Measures and Management			
Initiative	*Outcome*	*Implementation at 30 June 1996*	*Implementation at 31 December 1996*
Implementation of continuous improvement of services to complainants and respondents	Improved customer satisfaction with and confidence in the complaint handling process, and improved equal opportunity policies due to more positive attitudes from respondents	Target increase in satisfaction level of 1% to 3%	Target increase in satisfaction level of 3.1% to 5%
Reduced time to handle complaints	Reduced times to finalise complaints leading to reduced costs, greater chance of conciliation, improved customer satisfaction	Target reduction in time to handle complaints of 3% to 5%	Target reduction in time to handle complaints 5.1% to 8%

PRODUCTIVITY IMPROVEMENT PLAN
PART 2—ESTABLISHING NEW SYSTEMS TO FURTHER IMPROVE PRODUCTIVITY

Increased Range of Services			
Initiative	*Outcome*	*Implementation at 30 June 1996*	*Implementation at 31 December 1996*
Legal education system	More effective and prompt resolution of complaints leading to increased customer satisfaction	System developed and ongoing implementation	
Modification of processes to meet needs of specified target groups	Improved service delivery to existing and new clients		System developed
Organisational Planning, Performance Measures and Management			
Initiative	*Outcome*	*Implementation at 30 June 1996*	*Implementation at 31 December 1996*
Planning Cycle	Maximise program outcomes within available resources	Framework finalised and planning system operational on trial basis	Framework finalised and ongoing implementation
Development of manual for continuous improvement of services to complainants and respondents	Improved customer satisfaction with and confidence in the complaint handling process, and improved equal opportunity policies due to more positive attitudes from respondents	Review of processes based on customer surveys completed Manual drafted	Manual finalised and ongoing implementation
Extension of EOC databases	Better planning, identification and monitoring of performance targets	Disability Services database operational and commencement of its ongoing use	
Integrated measure of productivity and mechanism to cost EOC services	Enables setting of productivity targets and monitor progress		Commence development of system
Staff development system including performance management	Improve employee performance to meet corporate goals		Commence development of system
Systems for negotiation of agreed timeframes for complaints	Improved customer satisfaction	Commence development of system	System developed and start of ongoing implementation
System for reallocating complaints	Prevention of perceived conflict of interest. Improved customer satisfaction	Commence development of system	System developed and start of ongoing implementation

Development of and commitment to standards			
Initiative	*Outcome*	*Implementation at 30 June 1996*	*Implementation at 31 December 1996*
Internal communications strategy	More effective planning and change management	System developed and ongoing implementation	
Corporate Service agreement with Ministry of Justice	More cost effective corporate services	Commence negotiations	Agreement finalised and start of ongoing implementation
Standards and benchmarks for all services and revised customer service charter	Increased customer focus and compliance with government standards		Commence development of system
Code of conduct	Improving customer service and compliance with government requirements.	Commence development of Code	Code developed; start of ongoing implementation
Retention and disposal schedule for records	Meet external standards and more cost effective storage	Plan development of system	System developed; start of ongoing implementation
Improved flexibility and efficiency			
Initiative	*Outcome*	*Implementation at 30 June 1996*	*Implementation at 31 December 1996*
Implementation of automated records and thesaurus	Improved information storage and retrieval	Planning completed and systems selected by 30 June 1996	Systems fully operational and ongoing use
Upgrading office automation - on-line scheduling and e-mail systems	More cost effective administration systems.	On-line scheduling and e-mail in place and ongoing use commenced.	
Commission wide input into policy	Improved policy development	Commence development of system	System developed and start of ongoing implementation
Mechanisms to reduce time for cases to get to hearings	Increased satisfaction and reduced costs	Commence development of system	System developed and start of ongoing implementation
Review of organisation structure after 12 month trial	Improved effectiveness and efficiency through fine tuning of structure		Commence review
Separation of Tribunal	Reduce conflicting priorities and	Separation of Tribunal functions	

FISHERIES DEPARTMENT OF WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 1996
No. PSG AG 3 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fisheries Department

and

The Civil Service Association of Western Australia Incorporated & Other.

No. PSG AG 3 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R. H. GIFFORD.

14 May 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT
No. PSG AG 3 of 1996.

Having heard Mr J. Hetman on behalf of the Applicant and Ms J. Blake on behalf of the The Civil Service Association of Western Australia (Incorporated), and Mr J. Fiala on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Fisheries Department of Western Australia Enterprise Bargaining Agreement 1996, No. PSG AG 3 of 1996, 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 Fisheries Department of Western Australia Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 Structural Efficiency Principles
11. Objectives and Principles
12. Employment Contracts
13. Productivity Improvement
14. Productivity Measurement
15. Dispute Resolution Procedures
16. Sick and Family Support Leave
17. Long Service Leave
18. Bereavement Leave
19. Annual Leave Loading
20. Hours

21. Public Holidays
22. Sea Going Allowances
23. Effect of Agreement on Accrued Entitlements
24. Salary Increases
25. Signatures of the Parties to the Agreement Signed for and on behalf of the Parties to this Agreement
Schedule 1—Salaries
Schedule 2—Sea Going Allowances

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Fisheries Department of Western Australia employees including Senior Executive Service employees working in the Fisheries Department who are members of, or eligible to be members of the Civil Service Association of Western Australia (Inc) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

As at 1 February 1996, the number of employees subject to this Agreement totalled 294.

4.—PARTIES TO THE AGREEMENT

(1) Employer

- Chief Executive Officer, Fisheries Department of Western Australia.

(2) Unions

- Civil Service Association of Western Australia (Inc.).
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

5.—DEFINITIONS

"Agreement": The Fisheries Department of Western Australia and Civil Service Association of Western Australia (Inc) and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division WA Branch Enterprise Bargaining Agreement.

"CSA": Civil Service Association of WA (Inc).

"CEPU": Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

"Department": Fisheries Department of Western Australia.

"Employee": For the purposes of this Agreement, someone who is referred to at Clause 3.—Scope of the Agreement.

"Employer": Chief Executive Officer, Fisheries Department of Western Australia.

"ETA": Engineering Trades (Government) Award 1967.

"Government": The State Government of Western Australia.

"Minister": The Minister or Ministers of the Crown responsible for the administration of the Fisheries Department of WA.

"PSA": Public Service Award 1992.

"Unions": The unions and associations which are listed as parties to this Agreement in Clause 4.—Parties to the Agreement, of this Agreement.

"WAIRC": The Western Australian Industrial Relations Commission.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement shall operate from the beginning of the first pay period commencing on or after the date on which this Agreement is registered in the Western Australian Industrial Relations Commission (WAIRC) and shall remain in operation for a period of eighteen (18) months from the date of registration.

(2) The parties will review this Agreement six months prior to the expiration of this Agreement to commence negotiations for a new agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement or withdrawal from the Agreement where productivity improvements previously agreed, continue to be provided. The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

7.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the term of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this Agreement or as specifically provided for in a National or State Wage Case Decision.

(2) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

Except as provided by this Agreement the conditions of employment and rates of salary payable to employees are those covered by the Public Service Award 1992, Public Service Allowances (Fisheries and Wildlife Officers) Award 1990 and the Engineering Trades (Government) Award 1967. In the case of any inconsistencies, this Agreement shall have precedence to the extent of those inconsistencies.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprised representatives from each of the Divisions of the Fisheries Department of Western Australia and the the Civil Service Association of Western Australia Incorporated and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

10.—AUDIT OF 4% SECOND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLES

The parties agree that matters arising from previous industrial agreements or award changes emanating from the Restructuring and Efficiency Principle of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are:

(1) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(2) To achieve the Fisheries Department's mission and improve productivity and efficiency in the Fisheries Department through continuous improvement.

(3) To promote the development of trust and motivation and to continue to foster enhanced employee relations by treating all employees in a fair and equitable manner.

(4) To facilitate greater flexibility in decision making and allocation of human and other resources.

(5) To promote increased career and skill development, job satisfaction and to gain employment and promotion opportunities.

(6) To develop and pursue improved work practices and procedures on a co-operative, continuing basis by using participatory practices.

(7) To promote health and safety, and equal employment opportunity for all employees.

12.—EMPLOYMENT CONTRACTS

The parties to this Agreement agree that to ensure maximum effectiveness of the Department, the extent of the engagement of temporary, casual or contract employees will be determined by operational need.

The parties will continue the introduction of other flexible working arrangements which include teleworking, part time employment and working from home arrangements.

13.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Performance Improvement

Fisheries Department—Mission Statement.

To manage the use and harvesting of fisheries resources at ecologically sustainable levels, and manage the development of aquaculture, in order to maximise the economic benefits to the State, whilst conserving and protecting the State's aquatic ecosystems for the benefit of the present and future Western Australian community.

(2) Strategies and Initiatives Developed to Achieve Objectives

The parties are committed to the development and implementation of a broad range of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Fisheries Department of Western Australia.

The parties agree that increases in productivity will be achieved through the implementation of agreed quality management concepts, including team-based approaches.

(3) Future Issues for Negotiation

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will be considered in negotiations for future agreements.

The strategies and initiatives introduced over the life of the Agreement will impact significantly on work practices, customer service and employee satisfaction.

The parties agree to the following initiatives for productivity by 30 September 1996 and 30 June 1997 as per the following outcome commitments. Salary increases scheduled for 30 September 1996 and 30 June 1997 are conditional upon successful implementation of the productivity outcomes mentioned in this clause.

(4) Outcomes to be Achieved by 30 September 1996

Corporate Executive Initiatives

(a) Establish TQM teams for process and problem solving. Minimum requirement for teams to be in place for:

Accounts — Central

Accounts — Regional Services

Accounts — Research Services

Payroll process improvement team

(b) 80% of all Senior District Fisheries Officers, Research Scientists, Workshop Employees and Regional Managers to have attended a staff supervision or staff development course.

(c) Expanded Customer Service Council in place with external client membership and new charter in place.

(d) Achievement of 80% Ministerial correspondence turnaround within time frames and quality standards negotiated with the Minister for Fisheries' office.

(e) Identify non-core activities in each Division and initiate a review of all outsourcing options.

(f) Set and agree on dates to achieve commitments for the salary increase scheduled for 30 June 1987.

(g) Initiate an efficient Joint Consultative Committee consultative process.

(h) To initiate development of a South-West freshwater fisheries and aquaculture research facility.

Corporate Support Division

(a) To finalise implementation of accrual accounting financial system.

(b) To have commenced implementation of a new personnel management system through bureau service.

(c) To complete audit of all assets, determine those no longer required and for 1996/97 onwards, commence disposal.

(d) In consultation with Department's external and internal clients, implement a standardised budgeting and reporting framework for capital and recurrent expenditure under a cost-recovery system.

(e) In consultation with Licensing Branch, to finalise a proposal for the development of the computer-based licensing system requirements for the Department's licensing system.

(f) To have commenced implementation of a regional computing network for the Department's operations.

(g) Financial Management Information System training—develop a profile of "key" staff and "second level" staff, with 50% of staff being trained.

Legal & Registry Branch

(a) To initiate a review of the Pearling Act 1990 and Fisheries Adjustment Schemes Act 1987.

(b) To establish an independent tribunal under the Fish Resources Management Act 1994.

Programs Management Division

(a) To establish formal consultative processes for 50% of the major client groups and fisheries under the cost-recovery framework.

(b) In consultation with client groups, to have completed operational and strategic plans for 50% of the major cost-recovery fisheries, significant minor fisheries, aquaculture and recreational fishing.

(c) To review current regulations for fish processing and pearling within the context of the Hilmer report on anti-competitive behaviour.

Strategic Planning Division

(a) A report to be completed reviewing current regulations for fish processing and pearling which will evaluate benefits and costs and consider alternative forms of regulation in the context of National Competition Policy.

(b) A report to be completed identifying and evaluating Government funding sources other than the State Government and how these can best meet program development requirements.

(c) Corporate strategic and operational plans, including performance indicators, completed for the Department overall and for each program area. This will provide better direction setting so that the Department develops and implements plans which are more beneficial to all fisheries user groups.

(d) Ministerial guidelines written for Rock Lobster processing by 1 April 1996, which will benefit industry by providing clear and transparent policies, consistent decisions, fewer appeals, control of foreign investment and thus greater retention of economic rents and help in prevention of criminal infiltration in the industry.

(e) A seafood marketing and promotional strategy developed, written and circulated for comment. This is aimed to help industry improve its marketing, quality of product and promotion and will also ensure a greater market focus.

(f) A report completed which reviews the policy and practice of processing licences with the aim to make them less resource intensive and to reduce bureaucratic delays.

(g) Substantial completion of the reviews of the Pearling Act 1990 and Fisheries Adjustment Schemes Act 1987 in collaboration with Legal and Registry Branch. The reviews will aim to provide more efficient and effective management practices.

(h) Implementation of a planned on-going planning process which will ensure that the Department remains dynamic and able to anticipate and meet new priority needs.

Research Division

(a) Complete a review of all research activities, priorities and restructure activities in accordance with client and Government requirements under cost-recovery.

(b) To complete an evaluation of existing research laboratory space and draw up development plans to provide more efficient laboratory space.

(c) To identify and evaluate funding from additional sources to meet program research requirements.

(d) To develop a strategic plan to replace outmoded hardware to increase the efficiency of fisheries research database systems and communications.

(e) All Research staff to have undertaken formal Occupational Health and Safety training which includes awareness raising about the Department's Occupational Health and Safety Manual and Policies.

(f) Complete a review of the Public Service Allowances (Fisheries and Wildlife Officers) Award 1990, to identify existing inefficiencies and inequities.

Regional Services Division

(a) To increase the effectiveness and efficient management of human resource and financial management in regions by appointing Regional Managers and devolving functions to the Mid West, North and Metropolitan Regions.

(b) Prosecution of 60% of guilty pleas in Regions by implementing a Regional Prosecutions System for Fisheries Officers.

(c) To have an effective and efficient prosecution system with all Senior Fisheries Officers being trained in conducting regional prosecutions, issuing Infringement Notices and the publication of Prosecution Standards and Policies.

(d) To provide efficient and effective monitoring of the North West fish trawl fisheries by commencing installation of a Vessel Monitoring System (VMS) to increase the level of surveillance.

(e) To have increased efficiency of policing fisheries by the introduction of Infringement Notices for minor offences.

(f) To increase the effectiveness of the delivery of Regional Services by reviewing all activities and developing Activity Plans at a District level.

(g) To increase services to the Fish Habitat Program by dedicating a Policy Officer for Abrolhos Islands matters.

(h) Improved industry input into the decision making in the Mid West Region by forming an Abrolhos Islands Consultative Committee.

(5) Outcomes to be achieved by 30 June 1997

Corporate Executive Initiatives

(a) Establish a computerised activity analysis system.

(b) Develop a policy for "shop front hours" for Saturdays.

(c) Annual business plans established by all Divisions.

(d) Streamline process and payment procedures for travel allowances and overtime payment applications.

(e) More than 50% of head office staff have undertaken training in a word processing package or relevant computer course.

(f) Achievement of 90% Ministerial correspondence turnaround within time frames and quality standards negotiated with the Minister for Fisheries' office.

(g) All relevant staff to have been trained in the Department's Financial Management Information Systems use at the appropriate level and a training process to be in place for new staff.

(h) Finalisation of a productivity measurement system to form the basis for future salary and condition improvements for Fisheries Department staff.

Corporate Support Division

(a) Implementation of a divisional system for Finance, Purchasing and Human Resource Management Systems to increase efficiency of operational accounting and payroll functions.

(b) To finalise arrangements for the development of the computer-based licensing system and to have commenced development.

(c) To increase the education component of the Department's activities by developing a three year Strategic Plan for community education about sustainable fishing activities and involving the community in managing the fisheries resource.

(d) In consultation with the Department's external and internal clients, implement a standardised budgeting and reporting frame work for capital and recurrent expenditure under a cost recovery system.

Legal and Registry Branch

(a) Commence development of a policy for extended electronic contact hours in key business areas, e.g. licensing.

(b) Commence development and implementation of upgraded licensing system.

(c) In conjunction with upgrading the licensing system, streamline the application procedure for commercial fishing licenses.

Programs Management Division

(a) To establish formal consultative processes for all of the major client groups and major fisheries under the cost-recovery framework.

(b) In partnership with consultative groups for major clients and cost recovered major fisheries, to have completed operation and strategic plans.

(c) In collaboration with Strategic Planning Division, to have completed and develop, under a new structure, a new corporate plan for the next five years covering the sub-programs of commercial fisheries, recreational fisheries, aquaculture and fish and habitat protection.

(d) Implement service provider agreements with four service provided areas: regional service, research services, corporate services and registry.

(e) Introduce a program management, objective setting, review and evaluation system.

Strategic Planning Division

(a) Completed guidelines for the Minister and Ministerial Advisory Committees, for all the commercial fishing, processing and recreational fishing industries that are currently (March 1996) requested. These will benefit industry by providing clear and transparent policies, consistent decisions, and reduction of crime in the fishing industry.

(b) A review to have been conducted recommending procedural changes to streamline the application process for commercial fishing licences to ensure increased customer satisfaction and reduce duplication of work.

(c) A program to be established restructuring minor commercial fisheries to improve cost efficiency, reduce user conflict and protect the State's fish resources.

(d) A review to have been completed which makes recommendations on potentially anti-competitive fisheries legislation, regulations and ministerial guidelines whilst protecting the long-term sustainability of the resource.

Research Division

(a) Initiate replacement or expansion of the Western Australian Marine Research Laboratory facility to meet projected staff levels.

(b) To develop a new Technical Officers' working arrangement that provides for greater efficiency in terms of administration costs, enhances flexibility in terms of research programs and addresses

existing inequities in work arrangements for Technical Officers.

(c) In consultation with programme managers develop and publish a 5 year strategic plan for research activities.

(d) To have an effective research and development capability by establishing South West freshwater fisheries and aquaculture research and development facilities.

Regional Services Division

(a) To have effective and efficient prosecution systems by publishing Prosecution, Compliance and Breach Manual and training all appropriate Regional Services staff in their use.

(b) To have effective and efficient Compliance Program by implementing an Infringement Notice system.

(c) To develop improved working arrangements for Fisheries Officers that provide greater flexibility, efficiency and effectiveness by addressing inequities in the Public Service Allowances (Fisheries and Wildlife Officers) Award 1990.

(d) To improve the effectiveness of compliance in the prawn and scallop fisheries by implementing Vessel Monitoring Systems.

(e) To improve the efficiency of compliance services by using an expanded part time field operation group for weekend and holiday coverage of recreational fishing activities.

(f) To have an effective Regional Prosecution system in place in all regions.

(g) To efficiently and effectively manage minor fisheries in the Regions by Regional Managers taking responsibility for minor fisheries in their regions.

(h) To improve the effectiveness of education programs by expanding the Voluntary Fisheries Liaison Officers (VFLOs) program.

(i) To have an effective and efficient division by reviewing the current structure and classification of all positions within the Division and identifying functions that can be outsourced.

(j) To have an effective Compliance Program with 80% of all minor offences processed using Infringement Notices.

14.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements is important because it provides critical feedback on the performance of the Department to management, employees and other stakeholders.

(2) It is agreed that employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

(3) It is agreed that a productivity measurement system be jointly developed between management, employees and unions, as part of the overall aim of improving productivity in the Department. The performance monitoring system will be in place by 30 June 1997 as mentioned in Clause 13.—Productivity Improvement, of this Agreement.

(4) It is expected that, without limiting the scope of the program, the following issues will be addressed:

(a) Key aims for the enterprise arising out of the strategic and corporate business planning process.

(b) Productivity and performance indicators based upon the aims identified in paragraph (3), of this clause.

(c) Benchmarks which clearly establish and describe the goals each work group within the Department is trying to achieve.

(d) An appropriate productivity measurement system which involves employees in the monitoring of performance which facilitates a culture of continuous improvement.

(e) Customer feedback and input together with measures of client satisfaction with the Department's service efficiency and effectiveness.

(f) Review and evaluate strategies.

15.—DISPUTE RESOLUTION PROCEDURES

(1) In the event of any dispute, question or difficulty arising, or any questions, disputes or difficulties that arise between the parties about the meaning or effect of the Agreement, the parties will consult together to reach a settlement.

(2) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

(3) In the event of any disagreement between the parties as to the interpretation of this Agreement the following procedure shall apply:

(a) The Civil Service Association of Western Australia Incorporated or Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch representative and/or the employee/s concerned shall discuss the matter/s with the immediate supervisor in the first instance. An employee may be accompanied by a Civil Service Association of Western Australia Incorporated or Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch representative.

(b) If the matter is not resolved within 5 working days following discussion in accordance with subclause (1) hereof, the matter shall be referred by the Civil Service Association of Western Australia Incorporated or Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch representative to the Chief Executive Officer or his/her nominee for resolution.

(c) If the matter is not resolved within 5 working days of the Civil Service Association of Western Australia Incorporated or Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch representative's notification of the dispute to the Department, it may be referred by either party to the Western Australian Industrial Relations Commission.

16.—SICK AND FAMILY SUPPORT LEAVE

Notwithstanding Clause 22.—Sick Leave of the Public Service Award 1992 (PSA) and Clause 24 of the Engineering Trades (Government) Award 1967 (ETA) ;

(1) The employer shall credit each employee with the following sick leave credits which shall be cumulative—

Sick Leave on Full Pay		
On the day of initial appointment	PSA	45 hours 36 minutes (6 days)
	ETA	38 hours (5 days)
On completion of 6 months	PSA	49 hours 24 minutes (6.5 days)
continuous service	ETA	38 hours (5 days)
On completion of 12 months	PSA	95 hours (12.5 days)
continuous service	ETA	76 hours (10 days)
On completion of each further period	PSA	95 hours (12.5 days)
of 12 months continuous service	ETA	76 hours (10 days)

(2) Public Service Award 1992 leave credits at full pay shall be credited at 38 hours per week, a total of 10 full days. Five half-day sick leave credits shall be accredited at full pay, a total of 2.5 days (total annual credit of 12.5 days).

(3) Engineering Trades (Government) Award 1967 leave credits at full pay shall be credited at 38 hours per week, a total of 10 full days.

(4) Sick Leave shall also include family support leave to a maximum of 5 days per year non-cumulative.

(5) Family support leave is defined as follows:

Leave taken by an employee to give support to a family member who is suffering ill health or injury and shall include a spouse, defacto spouse, child or parent.

(6) The requirements of Clause 22 subclause (2) of the Pub-

lic Service Award 1992 apply to family support leave.

17.—LONG SERVICE LEAVE

Notwithstanding Clause 21.—Long Service Leave of the Public Service Award 1992 and Clause 24.—Sick Leave, of the Engineering Trades (Government) Award 1967.

(1) Long service leave will be taken within three (3) years of its becoming due, provided that the employer may approve the deferment of long service leave in exceptional circumstances, and provided further that such exceptional circumstances shall include retirement within five (5) years of the date of entitlement.

(2) Employees who have accumulated one full entitlement of long service leave may apply to:

(a) Be paid money equivalent to some or all of the long service leave per entitlement to the employee in lieu of taking such leave.

(b) Clear part or all of one full entitlement on half pay, however no more than one period of long service leave shall be approved at half pay.

(c) Clear long service leave entitlement in minimum periods of one (1) week.

Applications may be approved by the Employer subject to departmental convenience.

18.—BEREAVEMENT LEAVE

This clause shall replace Clause 26.—Short Leave of the Public Service Award 1992 and Clause 29.—Compassionate Leave, of the Engineering Trades (Government) Award 1967.

(1) An employee shall be entitled to a maximum of 2 days (15 hours 12 minutes) bereavement leave per relevant bereavement.

(2) Bereavement leave may be taken on the death of—

(a) The spouse or de facto spouse of an employee.

(b) The child or step-child of an employee.

(c) The parent, step parent or sibling of an employee.

(d) Any other person who, immediately before that person's death, lived with the employee as a member of the employee's family.

(e) Any other person, subject to the agreement of the employer.

(3) Bereavement leave may be taken as 2 consecutive working days (15 hours 12 minutes).

(4) An application for bereavement leave will not be approved to reinstate a period of annual, sick or long service leave.

An employee who claims to be entitled to paid leave under this clause is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to—

(1) The death that is subject of the leave sought.

(2) The relationship of the employee to the deceased person.

19.—ANNUAL LEAVE LOADING

This clause will replace Clause 19 subclause (11) Annual Leave Loading of the Public Service Award 1992 and Clause 22 subclause (11) of the Engineering Trades (Government) Award 1967.

As from 1 January 1997, annual leave loading will no longer apply to any employee at the time of taking annual leave. Entitlements already accrued, or to accrue in 1996, shall be paid to employees consistent with Clause 23.—Effect of Agreement on Accrued Entitlements, of this Agreement.

20.—HOURS

(1) Notwithstanding Clause 16.—Hours, of the Public Service Award 1992, employees will be required to work:

(a) Seventy six (76) hours instead of seventy five (75) hours per fortnight.

(b) One hundred and fifty two (152) hours instead of one hundred and fifty (150) hours per four week period.

(c) Seven (7) hours thirty six (36) minutes instead of seven (7) hours thirty (30) minutes.

(d) Thirty eight (38) hours instead of thirty seven (37) hours thirty (30) minutes per week.

(e) Eight (8) hours twenty six (26) minutes instead of eight (8) hours twenty (20) minutes for a nine (9) day fortnight.

in any application of this clause.

(2) Prescribed Hours of Duty

Prescribed hours of duty to be observed by Public Service Award 1992 employees shall be seven (7) hours thirty six (36) minutes per day worked between 7.00 am and 7.00 pm Monday to Friday. Subject to the lunch interval prescribed hours are to be worked in one continuous period.

(3) Flexitime Periods

Subject to the supervisor's agreement employees may select their own starting and finishing time within the following periods:

7.00 am — 10.00 am

12 noon — 2.00 pm (minimum half hour break)

3.00 pm — 7.00 pm

(4) Core Periods

Employees must work in the following core periods unless unavoidably absent due to illness, approved leave, or as approved by the manager/supervisor.

10.00 am — 12.00 noon

2.00 pm — 3.00 pm

Nothing in that clause will override the existing working arrangement established pursuant to the Public Service Allowances (Fisheries and Wildlife Officers) Award 1990.

21.—PUBLIC HOLIDAYS

Subject to Clause 20.—Public Holidays of the Public Service Award 1992, the two additional Public Service holidays for Easter Tuesday and New Year no longer apply.

This clause does not apply to employees whose employment conditions are determined by the Engineering Trades (Government) Award 1967.

22.—SEA GOING ALLOWANCES

This clause replaces clause 40 of the Public Service Award 1992.

(1) Sea Going Allowance

(a) An employee who is required to live on board a government vessel which provides accommodation and who is necessarily absent from his or her usual place of residence overnight, shall be paid a sea going allowance as prescribed in Schedule 2 to cover victualling and all incidental expenses of employment other than overtime.

(b) Charges for victualling levied on an employee when accommodated on other than a government vessel shall be met by the Department and the sea going accommodation allowance referred to in paragraph (a) of this subclause shall not be payable.

(c) Subject to the decision of the employer that the difficulties of living on board the non-government vessel are greater than those normally encountered on a government vessel, an allowance as prescribed in Schedule 2 for each occasion on which the employee is accommodated overnight, shall be paid.

(d) The daily allowance shall be paid for each day exceeding eight hours spent on board a vessel, provided that one half of the allowance shall be paid for any part of a day.

(2) Australian Fishing Zone (AFZ) Hard Living Allowance

(a) Employees who are employed within the Australian Fishing Zone (AFZ) Section who are required to live on board a Navy Patrol vessel shall be paid an AFZ allowance as prescribed in Schedule 2.

(b) The daily allowance will be paid for each day involving an overnight stay on board a Navy Patrol vessel.

(c) The daily allowance shall be paid for each day exceeding eight hours spent on board a vessel, provided that one half of the allowance shall be paid for any part of a day.

The Australian Fishing Zone Allowance will be reviewed by the parties to this Agreement should the Federal Government funding for the allowance be withdrawn during the term of the Agreement.

(3) All seagoing employees, other than Australian Fishing Zone employees in receipt of the allowance described in subclause (2) of this clause, are entitled to a hard living allowance prescribed in Schedule 2.

To compensate for difficulties associated with living in small vessels at sea, a hard living allowance shall be paid to employees for every hour spent at sea where the employee is accommodated on the vessel overnight.

(4) Prior to the conclusion of this Agreement, the parties agree that there will be a joint review of the standard food parcel used to establish the regional costs of providing food on board vessels. This will be conducted in consort with the Department of Productivity and Labour Relations, and will seek to establish a proper basis for ongoing adjustment of the reimbursement.

(5) An employee in receipt of an allowance prescribed by this clause shall not receive payment of allowances prescribed in Clause 38.—Relieving Allowance or Clause 42.—Travelling allowance, of the Public Service Award 1992.

23.—EFFECT OF AGREEMENT ON ACCRUED ENTITLEMENTS

(1) Subject to the provisions of this clause accrued annual leave, long service leave and sick leave (expressed as days) will be carried over and recognised for the purposes of this Agreement.

(2) Accrued annual leave, long service and sick and family support leave entitlement paid during the term of this Agreement is to be at the appropriate rate the employee is entitled to under this Agreement.

(3) Annual leave loading accrued prior to 1 January 1997, will be paid to all employees prior to 31 December 1996. Subject to Departmental convenience, it is envisaged that accrued leave loading will be paid to all employees prior to 30 June 1996. As from 1 January 1997 annual leave loading will form part of the fortnightly salary.

(4) Employees who have accrued annual leave prior to 31 December 1995 may apply to be paid money at the employee's substantive salary specified in this Agreement, equivalent to some or all of the entitlement to the employee in lieu of taking such leave.

Applications may be approved by the employer.

Payment must be paid prior to 30 June 1996.

24.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued co-operation of these improvements in productivity and/or work practice changes outlined in Clause 13.—Productivity Improvement, of this Agreement.

(2) The following increases will be payable from the first pay period on or after the dates mentioned below.

Public Service Award 1992

(a) An increase of 5.5% from 1 January 1996.

(b) An increase of 2.5% from 30 September 1996.

(c) An increase of 1.35% from 1 January 1997 for employees appointed to salary levels 1 through 6.4 under the Public Service Award 1992. Level 7.1 and above will receive an increase of $25.96 per fortnight.

(d) An increase of 2% from 30 June 1997.

Engineering Trades (Government) Award 1967

(a) An increase of 3% from 1 January 1996.

(b) An increase of 2.5% from 30 September 1996.

(c) An increase of 1.35% from 1 January 1997.

(d) An increase of 2% from 30 June 1997.

25.—SIGNATURES OF THE PARTIES TO THE AGREEMENT SIGNED FOR AND ON BEHALF OF THE PARTIES TO THIS AGREEMENT

Mr S. Home
Executive Director
Fisheries Department of Western Australia
Date:

Mr D. Robinson
Branch Secretary
The Civil Service Association of Western Australia (Incorporated)
Date: 28.3.1996

Mr J. Fiala
Organiser
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch
Date: 29.3.1996

SCHEDULE 1—SALARIES

LEVEL	AS AT 31/12/95	1/1/96	30/9/96	1/1/97	30/6/97
LEVEL 1					
under 17 years	10,873	11,471	11,758	11,917	12,155
17 years	12,707	13,406	13,741	13,927	14,205
18 years	14,822	15,637	16,028	16,245	16,569
19 years	17,157	18,101	18,553	18,804	19,180
20 years	19,267	20,327	20,835	21,116	21,538
21 years	21,165	22,329	22,887	23,196	23,660
22 years	21,817	23,017	23,592	23,911	24,389
23 years	22,468	23,704	24,296	24,624	25,117
24 years	23,115	24,386	24,996	25,333	25,840
25 years	23,766	25,073	25,700	26,047	26,568
26 years	24,417	25,760	26,404	26,760	27,296
27 years	25,166	26,550	27,214	27,581	28,133
28 years	25,684	27,097	27,774	28,149	28,712
29 years	26,450	27,905	28,602	28,989	29,568
LEVEL 2					
1st year	27,367	28,872	29,594	29,994	30,593
2nd year	28,070	29,614	30,354	30,764	31,379
3rd year	28,809	30,393	31,153	31,574	32,205
4th year	29,590	31,217	31,998	32,430	33,078
5th year	30,407	32,079	32,881	33,325	33,992
LEVEL 3					
1st year	31,530	33,264	34,096	34,556	35,247
2nd year	32,405	34,187	35,042	35,515	36,225
3rd year	33,307	35,139	36,017	36,504	37,234
4th year	34,233	36,116	37,019	37,518	38,269
LEVEL 4					
1st year	35,503	37,456	38,392	38,910	39,689
2nd year	36,498	38,505	39,468	40,001	40,801
3rd year	37,522	39,586	40,575	41,123	41,946
LEVEL 5					
1st year	39,494	41,666	42,708	43,284	44,150
2nd year	40,827	43,072	44,149	44,745	45,640
3rd year	42,212	44,534	45,647	46,263	47,189
4th year	43,649	46,050	47,201	47,838	48,795
LEVEL 6					
1st year	45,960	48,488	49,700	50,371	51,378
2nd year	47,531	50,145	51,399	52,093	53,135
3rd year	49,157	51,861	53,157	53,875	54,953
4th year	50,893	53,692	55,034	55,777	56,893
LEVEL 7					
1st year	53,555	56,501	57,913	58,590	59,762
2nd year	55,397	58,444	59,905	60,582	61,794
3rd year	57,401	60,558	62,072	62,749	64,004
LEVEL 8					
1st year	60,658	63,994	65,594	66,271	67,596
2nd year	62,991	66,456	68,117	68,794	70,170
3rd year	65,884	69,508	71,245	71,922	73,361
LEVEL 9					
1st year	69,497	73,319	75,152	75,829	77,346
2nd year	71,938	75,895	77,792	78,469	80,038
3rd year	74,722	78,832	80,803	81,480	83,109

	ETA per week	1/1/96	30/9/96	1/1/97	30/6/97
C10	452	465.56	477.2	483.64	493.31
C 9	473.8	488.01	500.21	506.96	517.1
C 8	495.6	510.47	523.23	530.29	540.9
C 7	517.4	532.92	546.24	553.61	564.68
C 6	561	591.86	606.66	614.85	627.15
C 5	582.8	614.85	630.22	638.73	651.5

SCHEDULE 2 — SEA GOING ALLOWANCES

South of 26º Latitude	
Seagoing accommodation	$27.20 per day
North of 26º Latitude	
Seagoing accommodation	$31.20 per day
AFZ Hard Living Allowance	$26.10 per day
Hard Living Allowance	40¢ per hour

GERALDTON BUILDING COMPANY HOLIDAY VILLAGE—NEWMAN INDUSTRIAL AGREEMENT No. AG 127 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Geraldton Building Co. Pty. Ltd.

No. AG 127 of 1996.

Geraldton Building Company Holiday Village—Newman Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 Geraldton Building Company Holiday Village—Newman Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Geraldton Building Company Holiday Village—Newman 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. Site Agreement
9. Enterprise Agreement
10. Signatories

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 Geraldton Building Company (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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 at the Holiday Village, Newman, covered by the terms of the Building Trades (Construction) Award 1987, No. R 14 of 1978 (the "Award").

(2) There are approximately forty employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 Industrial Relations Act, 1979 as amended (the "Act").

8.—SITE ALLOWANCE

In addition to Award of Industrial Agreement rates of pay, a site allowance of $1.40 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 with Clause 9.—Special Rates and Provisions of the award with the exception of those rates for the lifting of heavy blocks, cleaning down brick work and use of explosive powered tools.

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 will be read in conjunction with that agreement.

10.—SIGNATORIES

K. Reynolds
On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

L.J. Gallop
On behalf of Geraldton Building Co. Pty Ltd.

Dated this 30th day of April 1996.

GERALDTON BUILDING COMPANY LAWSON APARTMENTS INDUSTRIAL AGREEMENT No. AG 123 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Geraldton Building Co. Pty. Ltd.

No. AG 123 of 1996.

Geraldton Building Company Lawson Apartments Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 Geraldton Building Company Lawson Apartments Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Geraldton Building Company Lawson Apartments 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. Site Agreement
9. Enterprise Agreement
10. Signatories

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 Geraldton Building Company (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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 at the Lawson Apartments, South Hedland, covered by the terms of the Building Trades (Construction) Award 1987, No. R 14 of 1978 (the "Award").

(2) There are approximately twenty employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 Industrial Relations Act, 1979 as amended (the "Act").

8.—SITE ALLOWANCE

In addition to Award of Industrial Agreement rates of pay, a site allowance of $1.40 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 with Clause 9.—Special Rates and Provisions of the award with the exception of those rates for the lifting of heavy blocks, cleaning down brick work and use of explosive powered tools.

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 will be read in conjunction with that agreement.

10.—SIGNATORIES

K. Reynolds
On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

L.J. Gallop
On behalf of Geraldton Building Co. Pty Ltd.

Dated this 30th day of April 1996.

THE GERALDTON HARBOUR MASTER-MARINE PILOTS SALARY AGREEMENT 1996
No. AG 99 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

and

Geraldton Port Authority.

No. AG 99 of 1996.

The Geraldton Harbour Master-Marine Pilots Salary Agreement 1996.

COMMISSIONER A.R. BEECH.

24 May 1996.

Order.

HAVING heard Mr P. Grant Smith on behalf of the Applicant and Mr P. Connell 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 Geraldton Harbour Master-Marine Pilots Salary Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule on and from the 24th day of May 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as The Geraldton Harbour Master-Marine Pilots Salary Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties
4. Preamble
5. Ambit
6. Agreement
7. Review
8. Salaries
9. Hours of Duty
10. Duties
11. Definitions
12. Contract of Service
13. Payment of Salaries
14. Annual Leave
15. Annual Leave Loading
16. Long Service Leave
17. Sick Leave
18. Short Leave
19. Leave Without Pay
20. Travel Allowance
21. Motor Vehicle Allowance
22. Telephones
23. Uniforms
24. Protective Clothing
25. Copies of Agreement
26. Parental Leave
27. Salary Continuance
28. Compassionate Leave
29. Study Leave
30. Training
31. Supersession
32. Salary Sacrifice
33. Disputes Avoidance Procedure
34. Signatories

3.—PARTIES

(1) This agreement shall be binding on the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers (the union), its officers and members and The Geraldton Port Authority.

(2) The number of officers covered by this agreement is two.

4.—PREAMBLE

This agreement is intended to supersede the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984. It is designed to accommodate, amongst other things, working arrangement and the interface of relevant officers covered by this agreement with the Integrated Port Labour Force. This will enhance the operation of a multi-skilled workforce with the competency to perform port, marine and stevedore work in the Port of Geraldton.

This agreement is the result of discussion between the parties with a view to continuing and enhancing the fundamental restructuring of operations in Western Australian Regional Ports and the unique and specialised functions performed by the Harbour Master/Pilot, consistent with—

* those findings of the Interstate Commission report on the waterfront industry endorsed by the Federal and Western Australian Governments;
* introduction of the Integrated Port Labour Force in Geraldton in 1992 and renegotiation of Integrated Port Labour Force Geraldton Agreement in 1995;
* ensuring that working patterns and arrangements enhance flexibility and efficiency of regional ports;
* being commercially efficient in terms of port authority functions;
* the section 118A Order, Mis 072/95 Print M2421 handed down on 31 May 1995.

This agreement also has regard to developments in 1993 where, as a consequence of the merger of several state government departments, including Marine and Harbours, a new department was created, known as the Western Australian Department of Transport. In 1993 an agreement was negotiated between Marine and Harbours and the Geraldton Port Authority whereby Marine and Harbours would cease to provide pilotage services to the Port of Geraldton and persons employed as Harbour Masters/Pilots by Marine and Harbours would have their contracts of employment transferred to the Geraldton Port Authority, thus ceasing to be officers of Marine and Harbours and become officers of the Geraldton Port Authority.

The Geraldton Port Authority since 1993 has, as a consequence, had responsibility of the provision of pilotage services in that Port.

In 1994 the Geraldton Port Authority became a respondent to the Federal Marine Pilots Award 1991.

5.—AMBIT

This agreement shall—

(1) Provide the basis of payment of annual salaries and various allowances by the Geraldton Port Authority to relevant officers who are members of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(2) Supersede previous memorandum of agreement between the parties.

(3) Shall be read in conjunction with the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984 and the Marine Pilots Award 1991 and, in the event of any inconsistency, the terms of this agreement shall take precedence over the terms of the aforementioned agreement and awards.

6.—AGREEMENT

This agreement shall be effective on and from the 23rd day of February 1996 and shall continue for a period of one year.

7.—REVIEW

The terms and conditions of this agreement shall be reviewed three months prior to the expiry of this agreement.

8.—SALARIES

(1) Harbour Master/Deputy Harbour Master/Marine Pilots shall receive an annual salary of $69,679.00.

(2) The amount in subclause (1) of this clause shall be an aggregated annualised salaries for performance of all duties specified in this agreement.

9.—HOURS OF DUTY

(1) Hours

The salaries and allowances in this agreement are based upon hours being 75 hours at an average of 37.5 hours per week over a two week cycle.

(2) Roster

Harbour Masters/Pilots shall be employed on a self organised basis which shall provide for four days off duty (RDO) each calendar fortnight. RDOs not able to be taken by the time of the officers' annual leave shall be taken in addition to such annual leave.

(3) Fatigue—Exhaustion Break

Harbour Masters/Marine Pilots shall not be required to perform any duties having been on duty for 16 hours without an eight hours' exhaustion break between the time of completing and returning to duty.

10.—DUTIES

Duties of Harbour Master shall include—

(1) Pilotage of vessels for the Port of Geraldton.

(2) Management and supervision of pilot vessel crews.

(3) Completion of documentation re: collection of pilotage fees.

(4) Co-ordination of all arrangements for vessels arriving, anchoring, berthing, unberthings, shifting ship, departing and cargo handling operational requirements.

(5) Liaise with ship agents regarding arrival and departure arrangements for vessels having regard to tides, weather, sea states and draft/channel limitations of the port.

(6) Examine candidates for Pilotage Exemption Certificates.

(7) The organisation of towage.

(8) Co-ordination and development of port emergency plans.

(9) Liaise with the Hydrographic Office re: notices to mariners, navigation warnings and hydrographic reports.

(10) Management of port navigational aids.

(11) Sea search and rescue as required by State and Federal Marine Authorities.

(12) On-scene co-ordination of marine oil pollution operations within the port boundaries and supervise on-going maintenance of equipment and initial response within Geraldton port limits.

(13) Undertake matters relating to hydrographic soundings/dredging as required.

(14) Advise and liaise with Australian Maritime Safety Authority regarding port state control matters.

(15) Determination of practices and co-ordination of IPLF labour allocations with regard to—

(a) mooring and unmooring;

(b) linesboat functions;

(c) stevedoring operations;

(d) any other purposes.

(16) Berthing Master/Wharf Manager functions under the Port Authority Act.

(17) Involvement in port promotions, trade development and corporate planning process.

(18) Representation of the Geraldton Port Authority at meetings, conferences and functions.

(19) Involvement in the planning, construction and maintenance of marine structures.

11.—DEFINITIONS

(1) "Officer" means Harbour Masters, Deputy Harbour Masters and Marine Pilots employed by the Geraldton Port Authority.

(2) "Permanent Head" means the General Manager of the Geraldton Port Authority.

(3) "Union" means the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(4) "Employer" means the Geraldton Port Authority.

12.—CONTRACT OF SERVICE

(1) Every person appointed by the Geraldton Port Authority as a permanent officer shall be on probation for a period not exceeding six months, unless otherwise determined by the General Manager.

(2) At any time during the period of probation the General Manager, or such other person authorised by the Geraldton Port Authority to act on its behalf, may annul the appointment and terminate the services of the appointee.

(3) As soon as possible after the expiry of the period of probation the General Manager, or such other authorised person, shall—

(a) confirm the appointment; or

(b) extend the period of probation for up to six months; or

(c) annul the appointment and terminate the services of the appointee.

(4) Every person appointed as a permanent officer shall, either before commencing duty or during the period of probation, satisfy the following conditions unless the General Manager or such other authorised person otherwise determines.

(a) Provide evidence of age in the form of an Extract of Birth Entry or a certified copy of Birth Registration or other evidence acceptable to the General Manager; and

(b) Undertake a medical examination by a registered medical practitioner, nominated by the Geraldton Port Authority, to satisfy the General Manager that the appointee is in a fit condition to fulfil the duties of the office to be filled. The fee for the examination and certificate of the registered medical practitioner shall be paid by the appointee.

(5) Except where the Geraldton Port Authority approves of a shorter period of notice, an officer shall give the Geraldton Port Authority written notice of intention to resign of not less than—

(a) one month in the case of a permanent officer; or

(b) one week in the case of a temporary officer.

(6) The General Manager may terminate the contract of service of any permanent officer by one month's notice given in writing.

(7) The foregoing provisions of this clause do not affect the General Manager's right to dismiss an officer without notice for misconduct, and, in such a case, the salary of the officer shall be paid up to the time of dismissal only.

(8) (a) Where the General Manager considers that a position occupied by an officer is no longer necessary and no other employment is available to that officer, the union shall be notified in writing to that effect.

(b) The union may, within seven days of the date upon which that notification is given, request the General Manager to review that decision, but where an agreement is not reached in discussion between the employer and the union, the contract of service may be terminated in accordance with the provisions of subclause (6) of this clause.

(9) Where the General Manager seeks to terminate the services of an officer in accordance with subclauses (6) and (7) of this clause, upon written request the officer shall be supplied with a written statement setting out details of the incident, circumstance, event or matters upon which the General Manager based his/her decision.

13.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly.

(2) Unless otherwise agreed, salaries shall be paid by direct transfer to an account in a bank or other financial institution nominated by the officer and acceptable to the employer.

(3) Salaries may be paid in such other manner as is agreed between the employer and the union in a particular case.

(4) Where salaries are paid in accordance with subclause (2) of this clause the employer shall reimburse each officer in respect of any taxes, charges, duties or fees incurred, an amount of $40.00 per year.

(5) On pay day officers shall be given written advice showing the gross amount of salaries or allowances due and deductions.

(6) In the event of an underpayment of salaries an officer's pay shall be adjusted as soon as practicable but in any event no later than the subsequent pay period.

(7) The employer may make deductions from an officer's salary with the written consent of the officer, but shall not make deductions without such written consent.

14.—ANNUAL LEAVE

(1) Each officer shall be entitled to 42 consecutive days of recreation leave on full pay for each year of service, consisting of 28 calendar days of normal annual leave and 14 calendar days of annual leave in lieu of public holidays and public service holidays.

(2) Annual leave shall be calculated on a pro rata calendar year basis commencing on the first day of employment with the Geraldton Port Authority.

(3) Pro rata annual leave shall be calculated according to the following formula—

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

Provided that, in the first and last months of an officer's service, the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

For the purposes of this subclause, an officer who commences on the first working day of a month and works for the remainder of the month and an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(4) The additional two weeks' leave granted in lieu of public holidays shall be credited on a pro rata basis according to the following formula—

Completed months of service	Pro rata annual leave (working days) 10 additional days
1	Nil
2	1
3	2
4	3
5	4
6	5
7	5
8	6
9	7
10	8
11	9

(5) A permanent officer may take annual leave during the calendar year in which it accrues, but the time during which the leave may be taken is subject to the approval of the General Manager.

(6) A temporary officer may not take annual leave before it accrues. The General Manager may approve a temporary officer taking pro rata annual leave. The time during which any annual leave may be taken is subject to the approval of the General Manager.

(7) Annual leave shall be taken in one period unless otherwise approved by the General Manager.

(8) On written application an officer shall be paid salary in advance when proceeding on annual leave—

(a) When the convenience of the Geraldton Port Authority is served, the General Manager may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for a period of one year.

(b) The General Manager may renew the approval referred to in paragraph (a) of this subclause for a further period of one year or further periods of one year but so that an officer does not at any time accumulate more than three years' entitlement.

(c) Where the convenience of the Geraldton Port Authority is served, the General Manager may approve the deferment of the commencement date for taking annual leave so that an officer accumulates more than three years' entitlement.

(d) When an officer who has received approval to defer the commencement date for taking annual leave under paragraphs (a), (b) or (c) of this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(9) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(10) On application to the General Manager a lump sum payment for the money equivalent to pro rata annual leave shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies, but not to an officer who is dismissed.

15.—ANNUAL LEAVE LOADING

(1) Subject to the provisions of subclauses (2) and (4) of this clause, a loading equivalent to 17.5% of normal salary shall be paid to officers proceeding on annual leave, including accumulated annual leave.

(2) Subject to the provisions of subclause (4) of this clause the loading is to be paid on a maximum of four weeks' annual leave. Payment of the loading shall not be made for additional leave granted for any other purpose. The maximum payment shall not exceed the Average Weekly Earnings Per Employed Male Unit in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(3) Annual leave commencing in any year and extending without a break into the following year shall attract the loading calculated on the salary applicable on the day the leave commences.

(4) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is taken. Under these circumstances, an officer may receive up to the maximum loading for the approved accumulated annual leave, in addition to loading for the current year's entitlement.

(5) A pro rata loading shall be paid on periods of approved annual leave of less than four weeks.

(6) The loading shall be calculated on the officer's ordinary rate of salary.

(7) Where payment in lieu of accrued or pro rata annual leave is made on the death, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause for annual leave accrued after January 1, 1974 is to be paid.

(8) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion, but no refund is required in the event of the death of an officer.

16.—LONG SERVICE LEAVE

(1) An officer shall be entitled to thirteen weeks' long service leave on full pay if he/she has completed seven years' continuous service with the Geraldton Port Authority.

(2) For each and every subsequent period of seven years' continuous service an officer shall be entitled to an additional thirteen weeks' long service leave on full pay.

(3) Upon application by an officer, the General Manager may approve of the taking by the officer—

(a) of double the period of long service leave entitlement on half pay, in lieu of the period of long service leave entitlement on full pay; or

(b) of any portion of his/her long service leave entitlement on full pay or double such period on half pay.

(4) Continuous service shall not include the period during which an officer is on long service leave or any period exceeding two weeks an officer is absent on leave without pay or any service an officer may have before reaching the age of eighteen years.

(5) An officer who resigns or is dismissed, shall not be entitled to long service leave or payment for long service other than that leave that had accrued to him/her prior to the date on which he/she resigned or the date of the offence for which the officer is dismissed.

(6) Any public holiday occurring during the period in which an officer is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(7) Long service leave shall be taken as it falls due at the convenience of the General Manager but within seven years next after becoming entitled thereto: Provided that the General Manager may approve the accumulation of long service leave not exceeding six months in all in any particular case.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro rata long service leave shall be made in the following cases—

(a) To an officer who retires at or over the age of fifty five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro rata long service leave unless the officer has completed not less than twelve months' continuous service.

(b) To an officer who has retired for any other cause: Provided that no payment shall be made for pro rata long service leave unless the officer had completed not less that three years' continuous service before the date of his/her retirement.

(c) Where the officer dies after having served up to the date of death continuously for not less than twelve months and leaves a dependant spouse, children, parent or invalid brother or sister in which case the payment shall be made to such a spouse or other dependant.

(9) A calculation of the amount due for long service leave accrued and for pro rata long service leave shall be made at the rate of salary of an officer at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(10) Long service leave accrued prior to the issue of this agreement shall remain to the credit of each officer.

(11) The expression "continuous service" in this clause includes any period during which an officer is absent on full pay or part pay, from his/her duties in the Geraldton Port Authority's service, but does not include—

(a) any period exceeding two weeks during which the officer is absent on leave without pay;

(b) any period during which the officer is taking his/her long service leave entitlement or any portion thereof;

(c) any service of the officer prior to his/her attaining the age of eighteen years;

17.—SICK LEAVE

In the case of illness or injury of an officer, the General Manager shall grant the officer leave of absence on the following conditions—

(1) An application for leave of absence on the grounds of illness or injury exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of the illness or injury consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.

(2) The number of days' leave of absence which may be granted without production of the certificate required by subclause (1) of this clause shall not exceed, in the aggregate, five working days in any one calendar year.

(3) An officer who is unfit for duty as a consequence of an illness or injury shall inform the Permanent Head, or arrange for him/her to be so informed, forthwith and shall, as soon as reasonably possible thereafter, make a formal application for sick leave to cover his/her absence from duty.

(4) The basis for determining the entitlement to leave of absence on the grounds of illness or injury which an officer may be granted shall be ascertained by crediting the officer concerned with the following cumulative periods—

	Leave on Full Pay Working Days	Leave on Half Pay Working Days
On date of appointment	5	2
On completion of six months' service	5	3
On completion of twelve months' service	10	5
On completion of each additional twelve months' service	10	5

(5) Where an officer suffers illness or injury during the period of his/her—

annual leave for recreation—for a period of at least seven consecutive days; or

long service leave—for a period of at least fourteen consecutive days;

and produced at the time, or as soon as possible thereafter, medical evidence satisfactory to the General Manager that he/she is, or was, as a result of his/her illness or injury, confined to his/her place of residence or a hospital, he/she may, with the approval of the General Manager, be granted, at a time convenient to the Geraldton Port Authority, additional leave equivalent to the period during which he/she was so confined.

(6) Where an officer is duly absent on account of illness or injury and his/her entitlement to sick leave on full pay is exhausted, he/she may, with the approval of the General Manager, elect to convert any part of his/her entitlement to sick leave on half pay to sick leave on full pay, but so that his/her sick leave entitlement on half pay is reduced by two days for each day of sick leave on full pay that he/she receives by the conversion.

(7) An officer who is unable to resume duty on the expiration of an approved period of sick leave shall thereupon apply for a further period of sick leave, and any such application shall be supported by a certificate from a registered medical practitioner.

(8) An officer who is duly absent on leave without pay is not eligible for leave of absence on the account of illness or injury under this clause during the currency of that leave without pay.

(9) This clause shall not apply where the officer is entitled to compensation under the Workers' Compensation and Rehabilitation Act, 1981.

(10) No leave of absence on account of illness or injury shall be granted with pay if the illness or injury has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(11) Where the General Manager has occasion to doubt the case of illness or injury or the reason for the absence, he/she may send a registered medical practitioner to attend on and examine the officer, or may direct the officer to attend the medical practitioner for examination.

If the report of the medical practitioner does not confirm that the officer is ill or injured, or if the officer is not available for examination at the time of the visit of the medical practitioner, or the officer fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(12) Where an officer, who has resigned, is subsequently reappointed, he/she shall, for the purposes of this clause, be regarded as a new appointee as from the date of his/her reappointment.

(13) Where an officer who has been retired due to ill-health resumes duty his/her sick leave entitlement at the date of his/her retirement shall be reinstated.

(14) An officer who is appointed subject to a medical examination, and whose appointment is deferred for a stated period on the recommendation of the appropriate Medical Officer, shall not be granted sick leave with pay during that period.

(15) If the General Manager has reason to believe that an officer is in such a state of health as to render him/her a danger to his/her fellow workers or the public, he/she may require the officer to obtain and furnish a report as to his/her condition from a registered medical practitioner or may require him/her to submit himself/herself for examination by the medical practitioner.

(16) Upon receipt of the medical report, the General Manager may direct the officer to absent himself/herself from his/her duties for a specified period, or if already on leave of absence, direct him/her to continue on leave for a specified period, and the officer's absence will be regarded as absence on leave owing to illness.

18.—SHORT LEAVE

(1) The General Manager may, upon sufficient cause being shown, grant an officer short leave on full pay not exceeding two consecutive working days, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, three working days in any one calendar year.

(2) An officer who desires short leave shall make written application in a form approved by the General Manager for the purpose.

19.—LEAVE WITHOUT PAY

(1) Subject to the provisions of subclause (2) of this clause, the General Manager may grant an officer leave without pay for any period.

(2) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met—

(a) the work of the Geraldton Port Authority is not inconvenienced; and

(b) all other leave credits of the officer are exhausted.

20.—TRAVEL ALLOWANCE

The Geraldton Port Authority will reimburse all reasonable expenses of an officer who travels on official Port Authority business, including and not limited to, travel, accommodation, meal and incidental expenses.

21.—MOTOR VEHICLE ALLOWANCE

An executive standard vehicle or other such vehicle as mutually agreed will be supplied by the Geraldton Port Authority for business use.

22.—TELEPHONES

A telephone shall be installed in the residence of each officer and the rental and the cost of Geraldton Port Authority calls shall be paid by the Geraldton Port Authority.

23.—UNIFORMS

(1) Officers shall be supplied uniforms as agreed between the parties in an exchange of letters.

(2) Uniforms shall be replaced on a fair wear and tear basis as is considered necessary by the Permanent Head.

(3) The Permanent Head may require uniforms to be worn at all times when considered necessary.

24.—PROTECTIVE CLOTHING

An officer will be supplied with wet weather gear of good and suitable quality and safety shoes at all times, and an officer engaged on work which requires the provision of protective clothing shall be provided with such protective clothing.

25.—COPIES OF AGREEMENT

Every officer covered by this agreement shall be entitled to have access to a copy of this agreement. Sufficient copies shall be made available by the Permanent Head for this purpose.

26.—PARENTAL LEAVE

Subject to the terms of this clause officers are entitled to maternity and paternity leave in connection with the birth of a child.

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means the child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Maternity Leave

An officer who becomes pregnant shall, upon production to her employer of the certificate required by subclause (4) of this clause, be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the officer's spouse in relation to the same child and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to subclauses (6) and (9) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An officer shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) of this clause.

(b) An officer 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) of this clause.

(c) The employer, by not less than 14 days' notice in writing to the officer, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

(d) An officer shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (b) of this subclause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(6) Transfer to a Safe Job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy, or hazards connected with the work assigned to the officer, make it inadvisable for the officer to continue at her present work, the officer 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 officer may, or the employer may require the officer to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this clause.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period maternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of maternity leave may be lengthened once only by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the officer.

(b) The period of maternity leave may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an officer terminates other than by the birth of a living child.

(b) Where the pregnancy of an officer then on maternity leave terminates other than by the birth of a living child, it shall be the right of the officer 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 officer to the employer that she desires to resume work.

(9) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an officer 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 registered 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 officer not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 the period to which the officer is entitled under subclause (3) of this clause.

(c) For the purposes of subclauses (10), (11) and (12) of this clause, maternity leave shall include special maternity leave.

(d) An officer 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 officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position she held immediately before such transfer.

Where such position no longer exists, but there are other positions available which the officer is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer 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 absences (excluding annual leave or long service leave), shall not be available to an officer during her absence on maternity leave.

(11) Effect of Maternity Leave on Employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(12) Termination of Employment

(a) An officer on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(13) Return to Work After Maternity Leave

(a) An officer shall confirm her intention of returning to 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 officer, upon returning to work after maternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of any officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position which she held immediately before such transfer or, in relation to an officer who has worked part time during the pregnancy, the position she held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the officer is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(14) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on maternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means a child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(d) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Paternity Leave

(a) A male officer shall, upon production to his employer of the certificate required by subclause (4) of this clause, be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) an unbroken period of up to one week at the time of confinement of his spouse;

(ii) a further unbroken period of up to 51 weeks in order to be the primary care giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the officer's spouse and shall not be taken concurrently with that maternity leave.

(b) The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place;

(b) in relation to any period to be taken under subparagraph (3)(a)(ii) of this clause, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The officer shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) of this clause.

(b) The officer shall not be in breach of paragraph (a) of this subclause as a consequence of failure to give the notice required if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The officer shall immediately notify his employer of any change in the information provided pursuant to subclause (4) of this clause.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be lengthened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of leave may be further lengthened by agreement between the employer and the officer.

(b) The period of paternity leave taken under subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (3)(a)(ii) of this clause but not commenced, shall be cancelled when the pregnancy of the officer's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is then entitled.

(b) paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an officer during his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(10) Termination of Employment

(a) An officer on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer on the ground of his absence on paternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An officer shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause.

(b) An officer, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an officer who has worked part time under this clause, to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the officer is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(12) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on paternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer exercising his 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

27.—SALARY CONTINUANCE

The parties agree to develop a salary continuance to be included under this clause. Such clause shall provide salary continuance at a rate not less than the officers' salary for the period of illness. It is the intention that all sick leave accrued under Clause 17.—Sick Leave of this agreement remain accredited after such agreement has been reached.

28.—COMPASSIONATE LEAVE

(1) An officer shall, on the death of the spouse, defacto, father, mother, father-in-law, mother-in-law, child, stepchild, brother, sister, stepfather, stepmother, grandfather, or grandmother of the officer be entitled to leave that the funeral of such relation is held on one of those days of leave granted. Such leave, for a period not exceeding three days in respect of any such death, shall be without loss of any ordinary pay which the officer would have received if he/she had not been on such leave.

(2) The right to such paid leave shall be dependent on compliance with the following conditions:

(a) The officer shall give the employer notice of intention to take such leave as soon as reasonably practicable after the death of such relation.

(b) Satisfactory evidence of such death shall be furnished by the officer to the employer.

(c) The officer 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 agreement or otherwise.

(3) The provisions of this clause shall apply in respect of the incapacitating illness of the spouse or dependent child of the officer when the officer establishes, to the satisfaction of the employer by production of a medical certificate, if required, that the spouse or child is in need of the assistance of the officer and that no other person is available for this purpose.

(4) The employer may also, upon sufficient cause being shown, grant an officer paid leave not exceeding two consecutive working days for such other reason, provided that the total leave available to officers under this clause shall not exceed three working days in any one calendar year subject to subclause (1) of this clause.

29.—STUDY LEAVE

(1) At the discretion of the Geraldton Port Authority an officer may be granted time off with pay for part time study purposes.

(2) Time off with pay may be granted up to a maximum of five hours per week including travelling time:

(a) where subjects of approved courses are available during normal working hours;

(b) where approved study by correspondence is undertaken where the approved course is outside the State of Western Australia.

(3) Officers shall be granted sufficient time off, with pay, to travel to, and sit for, the examinations of any approved course of study.

(4) In every case the approval of time off to attend lectures and tutorials will be subject to:

(a) Geraldton Port Authority's convenience;

(b) the course being undertaken on a part time basis;

(c) officers undertaking an acceptable formal study load in their own time;

(d) the course being relevant to the officers' career at the Geraldton Port Authority; and

(e) officers making satisfactory progress with their studies.

(5) Leave of absence will be granted at the ordinary rate of pay and shall not include penalty rates or overtime.

30.—TRAINING

The parties to this agreement are committed to external, industry and enterprise training of officers to achieve:

- higher skills relevant to the needs of the Geraldton Port Authority;

31.—SUPERSESSION

It is a term of this agreement that all rights and entitlements accrued by an officer formally covered by the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984, shall be carried over into this agreement.

32.—SALARY SACRIFICE

The parties undertake to develop and agree a salary sacrifice provision to be included under this clause.

The salary sacrifice clause shall be developed in accordance with the statutory and taxation provisions so as to enable officers to authorise the employer to pay additional superannuation contributions to approved funds on behalf of the officer and to reduce salary paid directly to the officer accordingly, having regard to the level of superannuation contributions and relevant statutory and taxation provisions.

33.—DISPUTES AVOIDANCE PROCEDURE

(1) Subject to the Public Sector Management Act, the union and the employer undertake to take all necessary steps to ensure that the following procedure herein applies in the event of a question, dispute or difficulty arising under this agreement; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the union shall respectively notify each other as soon as possible of any industrial matter which, in the opinion of the party notifying, might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the officer/s and the General Manager shall confer immediately.

(b) If not resolved the union and officer/s involved and the General Manager shall attempt to resolve the issue without delay.

(c) Where this fails to resolve the matter in dispute, the party in dispute shall notify the other party in writing of the nature of such dispute and the parties shall enter into further discussions in endeavouring to resolve the dispute.

(4) Reference to Conciliator

If agreement has not been reached in accordance with subclause (3) of this clause the employer or the union officer may, where agreed, submit the matter to a mutually agreed independent local conciliator who shall endeavour to reconcile the parties in dispute and for this purpose may make a recommendation or, where the parties agree, arbitrate the matter. The conciliator shall, in all cases, make a written summary of the matters in dispute including the facts as he/she sees them. A copy of such record shall be available for any further non-judicial proceedings between the parties relating to the matters in dispute.

(5) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Western Australian Industrial Relations Commission.

(b) The dispute settlement procedures shall not preclude the right of either party to refer a dispute to the Western Australian Industrial Relations Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

34.—SIGNATORIES

Signed on behalf of Geraldton Port Authority

LAURIE GRAHAM
GENERAL MANAGER

Signed on behalf of Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

TED BORONOVSKIS
W.A. SECRETARY

GOVERNMENT SCHOOL ADMINISTRATORS' ENTERPRISE AGREEMENT 1996
No. AG 81 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Minister for Education

and

State School Teachers Union of WA (Inc).

No. AG 81 of 1996.

Government School Administrators' Enterprise Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

16 May 1996.

Order.

HAVING heard Mr T. Adams on behalf of the Applicant and Mr A. Drake-Brockman and with him Ms S. Archer 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 Government School Administrators' Enterprise Agreement 1996 be registered as an Industrial Agreement.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Government School Administrators' Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties
4. Term of Agreement
5. Definitions
6. Permanency
7. Scope of Agreement
8. Relationship to Award
9. Salaries
10. Commitments
11. Consultation
12. Duties of School Administrators
13. Interpretation of Agreement
14. Variation
15. Lodgement
16. Severability
17. Objects of Agreement
18. Immunity
19. Education Support Administrators
20. Signatures

Appendix A—Targets
Appendix B—Salaries

3.—PARTIES

The parties to this Agreement are the Education Department of Western Australia and the Australian Education Union/State School Teachers' Union of WA Inc.

4.—TERM OF AGREEMENT

This Agreement takes effect from the date upon which it is registered, and shall remain in force for two years after the date of registration. Six months prior to the expiry of this Agreement the parties shall meet to negotiate a replacement Agreement. Notwithstanding its expiry, the terms and conditions of this Agreement shall continue to have effect unless and until replaced by a new Agreement.

5.—DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following expressions shall have the following meanings—

(1) "The Department" shall mean the Education Department of Western Australia of 151 Royal Street, EAST PERTH WA 6004.

(2) "The Director-General" shall mean the Director-General of Education.

(3) "The Union" shall mean the Australian Education Union/State School Teachers' Union of WA Inc.

(4) "The parties" shall mean the Department and the Union.

(5) "The Award" shall mean the Teachers' (Public Sector Primary and Secondary Education) Award 1993.

(6) "The Act" shall mean the Education Act 1928 as amended and any regulations made under the Act.

(7) "The Agreement" shall mean this Agreement entitled the Government School Administrators' Enterprise Agreement 1996.

(8) "School Administrator" shall mean those persons who hold positions of Principal, Deputy Principal, Vice Principal, Head of Department, Program Co-Ordinator and Learning Area Co-Ordinator.

6.—PERMANENCY

The existing permanency of employment of School Administrators is not affected by this Agreement, either during its term or following its expiry.

7.—SCOPE OF AGREEMENT

This Agreement shall apply to all School Administrators as defined in Clause 5.—Definitions who are eligible to be members of the Union and who are employed by the Minister for Education pursuant to the Act.

8.—RELATIONSHIP TO AWARD

The conditions prescribed in this Agreement shall, to the extent of any inconsistency, prevail over the terms prescribed in the Award. Otherwise the terms of the Award shall be read wholly in conjunction with this Agreement, and such terms are included in this Agreement.

9.—SALARIES

(1) Salaries

(a) Salary Levels

The salary levels prescribed in Levels 3, 4, 5, and 6 of Schedule B of the Award shall be incorporated into this Agreement and shall form the base salary levels upon which the increases prescribed in this Agreement are paid.

The salary levels at the time of registration of this Agreement are set out in Appendix B.

(b) Salary Increases

School Administrators covered by this Agreement shall have their salary level increased by 12% on 1 January 1996 and a further 8% on 1 January 1997, subject to the targets detailed in this Agreement being achieved.

Apart from salary increases otherwise available by progression through the incremental scale there shall be no other salary increases payable to School Administrators during the life of this Agreement.

(2) Salary Packaging

Subject to salary packaging becoming Government policy, the Department will offer salary packaging arrangements to School Administrators covered by this Agreement. Such arrangements will be consistent with Government policy and commensurate with other Government agencies.

The Department will offer such arrangements within three months of the enactment of the policy.

10.—COMMITMENTS

(1) Utilities Management

School Administrators will manage utilities based on the principles behind and the parameters for the current utilities management program. The Department will, pursuant to Clause 11.—Consultation, involve the Union in the development and implementation plans should changes to the current model be necessary.

Any changes to the base line costs for utilities management as a result of the implementation of policies relating to the community use of school facilities or flexible working hours will be taken into account by the Department.

(2) Grievance Procedures

School Administrators agree to implement grievance procedures in accordance with the proposed amendments to Clause 39 of the award, based on the following principles—

- the procedure will contain two levels;
- the levels will be the work site and the district;
- if the issues raised by the grievance have system-wide ramifications, the matter will be dealt with by the Director-General and the President of the Union or their nominees.
- it would be appropriate in exceptional circumstances which involved the relationship between School Administrators and the District Superintendent, that resolution may need to go beyond the immediate district.

(3) Community Use of School Facilities

School Administrators agree to implement the policy on Community Use of School Facilities including the development, by School Administrators, of a school policy by the end of the 1996 school year, within which the degree of participation is determined locally.

The parties acknowledge that implementation of the policy may be affected by agreements made with either the Community and Public Sector Union and/or the Australian Liquor, Hospitality and Miscellaneous Workers' Union of WA.

(4) Staff Meetings

School Administrators will manage staff meetings on the following basis—

- there will be no suspension of the instructional program for the purposes of conducting whole of staff meetings;
- a minimum of two whole of staff meetings per term will be held;
- meetings that do not involve the whole staff may be accommodated during instructional time where the meeting does not infringe on the school's instructional program; and
- in consultation with their staff, continue to determine staff meeting agenda and the frequency of such meetings on a needs basis.

(5) Flexible Working Hours

School Administrators will manage flexible hours for staff on the basis of the following—

- an improved curriculum can be offered as a result; or more effective or efficient use of resources occurs;

and where—

- a consultative process has occurred at a school level involving all local stakeholders, including the school decision-making groups, the Union, parents, students and staff; management issues such as duty of care, health and safety, and other legislative requirements have been allowed for; the distribution of hours is equitable; and equal opportunity requirements have been observed.

Specifically excluded from these arrangements are longer working hours for teachers and administrators; overtime; double shifts; and split shifts, unless agreed by the individual teacher. Provided that where a teacher or School Administrator agrees to work a split shift an allowance will be paid.

The parties acknowledge that implementation of the policy may be affected by agreements made with either the Community and Public Sector Union and/or the Australian Liquor, Hospitality and Miscellaneous Workers' Union of WA.

(6) Performance Management

School Administrators will—

- participate in the development of a performance management system;
- be performance managed; and
- performance manage the staff they supervise.

Such a system will—

- be based upon the performance of teachers and other staff;
- involve all teachers and other staff;
- operate through supervisory line relationships and can include self-evaluation and peer-evaluation techniques;
- confirm expectations between teachers and other staff and their supervisors about professional responsibilities;
- be linked directly to the school development plan; and
- promote growth and development of teachers and other staff.

This system will commence for School Administrators during 1996 in line with the terms agreed to which emanate from the process set out in Clause 11.—Consultation, and other staff during 1997, and will be accompanied by appropriate professional development resourced by the Department.

(7) School Grant

School Administrators will implement the agreed phasing in of nominated School Grant Initiatives at the school level, including initiatives related to—

- Professional Development;
- Relief Staff;
- Supplies, furniture and equipment;
- Services utilities and contract payments;
- Management and administration; and
- Minor works and faults maintenance.

The Department will, pursuant to Clause 11.—Consultation, involve the Union in reviewing all proposals related to school grant initiatives, differential resourcing and the development, trialing, implementation and evaluation of global budget constructs as per agreed principles. The Department will provide appropriate resources for professional development, technology and for management support.

Any additional elements will be negotiated by the parties and other key stakeholders for agreed implementation. There will be an interchange of documents and debate between the parties with respect to the negotiation of these issues.

(8) Professional Development

Over a two year period, School Administrators agree to participate in an accredited Professional Development Program, developed pursuant to Clause 11.—Consultation, which links directly to the role as a School Administrator, and where appropriate, to performance management.

The Department will resource professional development and career training for School Administrators and to meet the obligation to maintain and update School Administrators' professional skills.

Conferences will remain as per current practice for 1996 but will be subject to review pursuant to Clause 11.—Consultation.

The Union, as a professional development service provider, will undertake some professional development delivery for School Administrators beyond instructional hours, pursuant to Clause 11.—Consultation.

School Administrators will manage the Professional Development of classroom teachers.

(9) Staffing Formulae

The Union will support the review. Pursuant to Clause 11.—Consultation, School Administrators will implement the new differentially resource based staffing formulae. Implementation will commence in 1997 but may be variable across sectors.

In order to make allowance for the impact of performance management on the role of the Teaching Principal in level 3/4 schools, the incremental change in FTE allocation in the new formulae will be adjusted to meet this need.

To assist the implementation of performance management in relation to School Administrators who have a teaching load, the Department will make an additional allocation to schools on the basis of the span of control. The allocations will be subject to review after the initial year of implementation.

(10) Career Structure for School Administrators

The Union will participate in the development of career structures for School Administrators addressing these issues—

- transfer rights;
- local selection;
- school profiles;
- site tenure;
- differential salary structure; and
- lateral career paths, including liaison administrator positions.

(11) School Accountability and Reporting Requirements

School Administrators agree to the review, trial, evaluation and implementation, pursuant to Clause 11.—Consultation, of—

- reporting and accountability principles based upon current arrangements; and

- developments that will enhance the schools' capacity to ensure that parents are—
  - — well informed about school matters;
  - — surveyed about their satisfaction with the school;
  - — offered a forum to have input on appropriate school policies; and
  - — informed about performance of individual students and the school,

  and the school community is:
  - — well informed about school matters
  - — informed about the performance of the school.

(12) Mentoring

School Administrators will participate in a negotiated mentoring process of school administrator colleagues. The Department will provide appropriate resources to support that process.

(13) Participation in the Development of System Policy

School Administrators will participate in initiatives such as task forces, working parties and other consultative mechanisms to contribute to the development of system-wide policy, subject to reasonable notice and negotiation with relevant nominating body.

(14) Selection and Transfer of School Based Staff

School Administrators agree, pursuant to Clause 11.—Consultation, to undertake and be subject to the selection of school based staff in schools which choose to change, subject to—

- A systemically agreed process for school leadership and staff choosing to change;
- A vacancy occurring through transfer, promotion, retirement or any other reason that constitutes a permanent move from the position;
- The school utilising a consistent and equitable merit based process to accommodate participation in local merit selection and transfer;
- Costs incurred through local merit selection being funded through the school grant process; and
- Central involvement in assisting the local merit selection to assist in managing and resourcing the process.

School Administrators will continue to undertake selection of non Education Act staff. School Administrators in those schools in which the local selection of Education Act staff had already commenced prior to this Agreement, shall continue to do so.

For all schools not selected, the current central transfer process will continue.

(15) School Profiles

School Administrators agree, pursuant to Clause 11.—Consultation, to undertake the management of school based staffing profiles in schools which choose to change, subject to—

- A systemically agreed process for school leadership and staff choosing to change;
- A vacancy in a promotional area occurring through a transfer, promotion, retirement or any other reason that constitutes a permanent move from the position;
- The positions specified by the school being filled by merit transfer in the first instance;
- In 1996 for 1997 the school being able to choose to specify the role (emanating from the generic JDF for positions) and participate in a local merit selection process to fill the vacancy;
- In 1997 for 1998 the school being able to choose the profile of the positions (subject to the above) contingent upon the Department being able to secure a redundancy/retraining grant for the individuals affected and subject to gender equity (EEO) policy across the system being maintained;
- Costs incurred through local merit selection being funded through the school grant process; and
- Central involvement to support the selection process.

(16) School of Isolated and Distance Education

School Administrators appointed to the School of Isolated and Distance Education will agree to implement changes associated with the restructuring of the School of Isolated and Distance Education.

Provided that consultation occurs between the Department, the Union and the relevant School Administrators prior to the implementation of these changes, the Department agrees to consider any comments or proposals that may be put forward by the School Administrators or the Union in relation to these changes.

(17) Limited Site Tenure

The parties commit to the implementation of site tenure for School Administrators.

Site tenure refers to an administrator retaining an appointment to a particular school. Currently, administrators retain site tenure indefinitely unless their school is reclassified. The limiting of site tenure means that an administrator will not retain appointment to a particular school indefinitely.

The limited tenure applies only to location. The employee will retain permanency at the level of the appointed position subject to satisfactory performance.

Eligibility for movement and promotion will remain as current practice.

The parties will, pursuant to Clause 11.—Consultation, develop an agreed policy which has the following features—

- procedures for site tenure which include—
  - — an initial period of 5 years,
  - — continuation of tenure at that site that will be automatically confirmed unless the Director-General determines to the contrary; and
  - — a provision for advertising the position following a second period of 5 years to which the incumbent is eligible to apply.
- relocation and appointment to a location for particular period of time; and
- procedures for equity and professional development, redundancy and retraining.

The process for initiating limited site tenure appointments will commence from 1997 for transfers or promotions into schools in 1998. If a School Administrator has not relocated by the end of 1998, tenure at his or her current location will be deemed to commence from 1 January 1999.

(18) Achieving Targets

The parties are committed to achieving agreed outcomes in relation to the matters set out in Clause 10.—Commitments of this Agreement. This Agreement will continue, if, through no fault of the parties, specified targets are not able to be achieved within the nominated time frame.

11.—CONSULTATION

The Union will be involved in developing policy and planning the implementation of the items specified in Clause 11.—Consultation of this Agreement, specifically—

- a performance management system for School Administrators;
- an enhanced school grant which will include allocations for professional development, relief staff, supplies, furniture and equipment, services, utilities and contract payments, management and administration, and minor works, faults and maintenance;
- a professional development regime for School Administrators;
- a revised staffing formulae based upon a differential resourcing formula;

- a career structure for School Administrators incorporating issues such as transfer; the selection of school based staff; profiles; limited site tenure; differential salary structures; lateral career paths including the level of liaison administrator;
- a systemic introduction of merit transfer;
- accountability, reporting and quality assurance;
- selection of school based staff;
- policy development for school profiles for schools which choose to change;
- limited site tenure; and
- other initiatives as identified by the Department and the Union.

To facilitate the implementation of this Agreement—

- a process will be established to evaluate the role of Task Forces and to deal with Task Force outcomes about which some matters remain unresolved; and
- there will be joint monitoring of the impact of these changes upon School Administrators with respect to the implementation of this Agreement.

12.—DUTIES OF SCHOOL ADMINISTRATORS

Notwithstanding the limitations imposed on school operating time by the Education Act Regulations, School Administrators will work all such reasonable hours as are required to satisfactorily fulfil the requirements of their duty statement and to ensure the operational effectiveness of the school, including planning and preparation so that the instructional year is fully utilised for the teaching/learning program.

Specifically, the parties agree that—

- in a number of areas dealt with in this Agreement much of the work involved in the successful management of the processes requires use of out of instructional hours time;
- in cumulative terms on an annual basis, the commitment with respect to work out of instructional time will be, for level 6 and level 5 School Administrators 120 hours, level 4 School Administrators 80 hours and for level 3 School Administrators 40 hours.

This guarantees that, other than as agreed by the District Superintendent following consultation with the School Decision Making Group, all schools will be open for a minimum of three days in the week prior to students returning to school from the summer vacation, and that sufficient administrative staff will be present to ensure that all operational requirements for the commencement of the school year will occur, including for example—

- student enrolments (including new students);
- timetabling requirements;
- staff placements; and
- student placements.

13.—INTERPRETATION

Where a dispute or potential dispute concerning the true interpretation of this Agreement arises it shall be considered jointly by the Director of Industrial Relations or his nominee and an officer of the Union who shall attempt to resolve the issue.

If agreement as to the true interpretation of this Agreement cannot be reached, the matter may be referred by either party to the Industrial Relations Commission for determination.

14.—VARIATION

The provisions of this Agreement shall not be varied. Any agreed variation to this Agreement must be incorporated in a new Agreement.

15.—LODGEMENT

The parties agree to lodge this Agreement for registration with the Australian Industrial Relations Commission and the Western Australian Industrial Relations Commission.

16.—SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force, apart from such provision which shall be deemed deleted.

17.—OBJECTS OF THE AGREEMENT

In reaching this Agreement the parties have recognised—

- The need to safeguard and enhance the quality of learning and teaching in Government schools in Western Australia and the public perception of it.
- The aim of EDWA is to ensure all students within its schools develop the understandings, skills and attitudes which are relevant to individual needs, thereby enabling them to fulfil their potential and contribute to the development of society.
- The need to invest in quality educational leadership.
- The need to invest in an active partnership between EDWA and School Administrators in strategic decision making; policy development; and systemic cultural change, in promoting organisational health and ownership.
- The need to deliver improvements on the quality of education through greater flexibility, responsiveness to community needs and accountability at the school level.
- The Government School System of the future will provide schools with more autonomy to manage their own affairs; will enable schools to focus on meeting the needs of their particular students and communities; and will encourage stronger commitment by staff to their school.
- The variety of education and managerial arrangements that exist, requiring flexibility in the application of regulations that govern employment practices; and
- A career structure for School Administrators.

Accordingly this Agreement seeks to build on the objectives described above and to facilitate their achievement through the implementation of this Agreement.

18.—IMMUNITY

School Administrators shall be immune against all actions brought or maintained against them in accordance with the provisions of the Public Sector Management Act 1994 Clause 106.—Indemnity.

19.—EDUCATION SUPPORT ADMINISTRATORS

The parties agree to negotiate a revised bus allowance for buses managed by Education Support School Administrators immediately after registration of this Agreement. Such an increase acknowledges the particular demands and requirements of Education Support locations.

20.—SIGNATURES

Signed on the 6th day of March, 1996.

(Signed)	(Signed)
.....	.....
JERRY SKIVINIS A/DIRECTOR-GENERAL EDUCATION DEPARTMENT OF WA ON BEHALF OF THE MINISTER FOR EDUCATION	BRIAN LINDBERG PRESIDENT AUSTRALIAN EDUCATION UNION (WA BRANCH)/STATE SCHOOL TEACHERS' UNION OF WA (INC)

APPENDIX A — TARGETS

Initiatives	On registration of the Agreement	By 30 June 1996	By 31 December 1996	By 30 June 1997
Utilities management	School Administrators will take responsibility of utilities management as their schools enter the program.			
Grievance procedures	Adopt two tier grievance structure.			
Community use of schools facilities	School Administrators responsible for the management of the community use of their school facilities.		School based policy for implementation developed.	
Staff Meetings	Whole of staff meetings occur out of instructional time.			
Flexible working hours	Schools able to implement flexible working hours.			
Performance Management		Implementation commenced for School Administrators.		Commence implementation for all staff.
School grant	School Administrators responsible for the existing school grant elements.	School Administrators responsible for phasing in some new elements of the school grant.		School Administrators responsible for phasing in some new elements of the school grant.
Professional Development	School Administrators manage professional development activities for teachers.	School Administrators participate in development of professional development framework and accreditation process.		School Administrators participate in accredited professional development programs as agreed.
Staffing Formulae		Development of new formula completed.	Schools staffed in 1997 using the new differentially resourced staffing formula.	

Initiatives	On registration of the Agreement	By 30 June 1996	By 31 December 1996	By 30 June 1997
Career Structure	Commence development of a new structure.	Continue development of the new structure.		Complete development of the new structure.
School Reporting and Accountability		School Administrators participate in review of strengthening current practices in response to community requirements and models of best practice.		School Administrators trial developments emerging from review of current practices.
Mentoring	School Administrators participate in mentoring program as required.			
Policy Development	School Administrators participate in systemic policy development as required.			
Selection of School Based Staff	Continue with all non Education Act staff, some teaching staff in new schools, remote schools and those schools involved in 1995.	Extend to some positions including some promotional positions as vacancies occur in schools that choose to change.		Extend to some positions including some promotional positions as vacancies occur in schools that choose to change.
School Profiles		Commence implementation in schools as vacancies arise.		
Limited Site Tenure		Task Force established.	Task Force work completed.	All promotional positions advertised on a tenured basis.

Initiatives	On registration of the Agreement	By 30 June 1996	By 31 December 1996	By 30 June 1997
Consultation	Consultative mechanisms established			
	• Performance Management.	→		
	• Professional Development.	→		
	• Staffing Formulae.	→		
	• Accountability and Reporting.	----------	----------	→
	• School Based Selection of Staff.	→		
	• School Profiles.	→		
	• Limited Site Tenure.	----------	→	
	• Career Structure.	----------	----------	→
	• Impact of Change.	----------	----------	→
	• Enhanced School Grant.	----------	----------	→

APPENDIX B — SALARIES

LEVEL 3 SCALE	AWARD RATE	12% FROM 01/01/96	8% FROM 01/01/97
31AD	42 199.00	47 263.00	51 044.00
32AD	43 823.00	49 082.00	53 008.00
33AD	45 662.00	51 141.00	55 233.00

LEVEL 4 SCALE	AWARD RATE	12% FROM 01/01/96	8% FROM 01/01/97
41AD	47 679.00	53 400.00	57 673.00
42AD	48 941.00	54 814.00	59 199.00
43AD	50 203.00	56 227.00	60 726.00

LEVEL 5 SCALE	AWARD RATE	12% FROM 01/01/96	8% FROM 01/01/97
51AD	52 006.00	58 247.00	62 906.00
52AD	53 735.00	60 183.00	64 998.00
53AD	55 469.00	62 125.00	67 095.00

LEVEL 6 SCALE	AWARD RATE	12% FROM 01/01/96	8% FROM 01/01/97
61AD	58 363.00	65 367.00	70 596.00
62AD	60 097.00	67 309.00	72 693.00
63AD	61 826.00	69 245.00	74 785.00

GOVERNMENT SCHOOL ADMINISTRATORS' ENTERPRISE AGREEMENT 1996

At the time this Agreement was lodged for registration with the Western Australian Industrial Relations Commission, there were approximately 2,425 School Administrators covered by the proposed Agreement.

GOVERNMENT SCHOOL TEACHERS' ENTERPRISE AGREEMENT 1996
No. AG 82 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Minister for Education

and

State School Teachers Union of WA (Inc).

No. AG 82 of 1996.

Government School Teachers' Enterprise Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

16 May 1996.

Order.

HAVING heard Mr T. Adams on behalf of the Applicant and Mr A. Drake-Brockman and with him Ms S. Archer 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 Government School Teachers' Enterprise Agreement 1996 be registered as an Industrial Agreement.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Government School Teachers' Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties
4. Term of Agreement
5. Definitions
6. Scope of the Agreement
7. Relationship to Award
8. No Further Claims
9. Salaries
10. Career Structure
11. Staff Meetings
12. Performance Management
13. Flexible Hours
14. Selection and Transfer of School Based Staff
15. School Staffing Profiles
16. Professional Development
17. Grievance Procedures
18. Country Incentives
19. Occupational Health, Safety and Welfare
20. Class Sizes
21. Leave
22. Curriculum Development
23. Interpretation
24 Lodgement
25 Signatures
Schedule A—Salaries
Schedule B—Targets

3.—PARTIES

The parties to this Agreement are the Education Department of Western Australia and the Australian Education Union/State School Teachers' Union of WA (Inc).

4.—TERM OF AGREEMENT

This Agreement takes effect from the date upon which it is registered, and shall remain in force for two years after the date of registration. The parties shall meet at least six months prior to its expiry to negotiate a replacement agreement.

5.—DEFINITIONS

In this Agreement unless otherwise specified:

(1) "The Department" shall mean the Education Department of Western Australia of 151 Royal Street, EAST PERTH WA 6004.

(2) "The Director-General" shall mean the Director-General of Education.

(3) "The Union" shall mean the Australian Education Union/ State School Teachers' Union of WA (Inc).

(4) "The parties" shall mean the Education Department of Western Australia and the Union.

(5) "The Award" shall mean the Teachers (Public Sector Primary and Secondary Education) Award 1993.

(6) "The Act" shall mean the Education Act 1928 as amended and any regulations made under the Act.

(7) "The Agreement" shall mean this Agreement titled the Government School Teachers' Enterprise Agreement 1996.

6.—SCOPE OF THE AGREEMENT

This Agreement shall apply to all Education Act staff employed by the Education Department of Western Australia, excluding School Administrators who are employed as Principals, Deputy Principals, Vice Principals, Learning Area Co-Ordinators, Heads of Department and Program Co-ordinators.

7.—RELATIONSHIP TO AWARD

The conditions prescribed in this Agreement shall, to the extent of any inconsistency, prevail over the terms prescribed in the Award. Otherwise the terms of the award shall be read wholly in conjunction with this Agreement, and such terms are included in this Agreement.

8.—NO FURTHER CLAIMS

No additional claims on matters in this Agreement shall be raised during the term of this Agreement, except by mutual consent of the parties.

9.—SALARY

Classroom teachers (11TT-23TT) will receive:

- a 7.5% salary increase with effect from the first pay period on or after 1 January 1996; and
- a further 7.5% increase with effect from the first pay period on or after 1 January 1997, subject to agreed progress with respect to the implementation of the initiatives in this Agreement. The targets are attached to this Agreement at Schedule B—Targets.

Education Officers and School Development Officers will receive:

- a 7.5% salary increase with effect from the first pay period on or after 1 January 1996, and
- a further 7.5% increase with effect from the first pay period on or after 1 January 1997, subject to progress toward the implementation of other specific changes agreed with the Union.

Members of the School Psychology Service will receive:

- a 7.5% salary increase with effect from the first pay period on or after 1 January 1996, and
- a further 7.5% increase with effect from the first pay period on or after 1 January 1997, subject to progress toward the implementation of other specific changes agreed with the Union.

The above salary increases are in addition to the first $8 safety net adjustment, but absorb the second and third such $8 adjustments and the 5% salary increase being paid pursuant to the Order of Munro J dated 19 October 1995.

10.—CAREER STRUCTURE

A new career structure for classroom teachers will be jointly developed by the parties during 1996 and implemented during

1998. This structure will be implemented in conjunction with the performance management process during 1997, however translation on to any new resultant salary points will not occur until 1998.

The new career structure will:

- support the retention of competent, experienced teachers in duties directly associated with classroom teaching and learning;
- give status and recognition to the commitment of teachers to the development of their colleagues and school communities, as well as their own ongoing professional development;
- expand the career paths of teachers who do not wish (or are not able) to move into the administrative role; and
- use these teachers' skills to maximise the outcomes of students.

It is proposed that the career structure will:

- abolish the two and three year trained barriers and be based on demonstrated performance;
- comprise several levels, and a number of incremental points within the levels;
- define professional responsibilities and standards for each level;
- require ongoing development of performance through an annual cycle of performance management and professional development processes;
- recognise levels of competence for salary and promotional advancement through formal assessment processes;
- be competency based and allow for cross-skilling and up-skilling;
- contribute to the achievement of student learning; and
- provide two additional promotional levels for classroom teachers with a top salary of approximately $51,000 per annum (this takes into account the two 7.5% increases under this Agreement).

11.—STAFF MEETINGS

In order to minimise disruption to the school teaching day:

- there will be no suspension of the instructional program for the purposes of conducting whole of staff meetings;
- a minimum of two whole of staff meetings per term will be held, the length of these meetings will be on a needs basis;
- the agenda, venue and timing of meetings will be determined in full and proper consultation with staff. Equity considerations such as family responsibility, professional and personal development commitments and flexible hours arrangements shall be considered in the decision making process. The final responsibility to ensure meetings occur rests with the Principal;
- whole of staff meetings may include discussion groups, workshops and sub-committee meetings; and
- meetings that do not involve the whole of staff may be accommodated during instructional time where they can be timetabled and subject to the school's capacity to enable teacher(s) to attend, as long as the meeting does not infringe on the school's instructional program.

12.—PERFORMANCE MANAGEMENT

The parties will establish during 1996 a performance management system which complies with the requirement of the Public Sector Management Act and which will be implemented during 1997. The system will:

- be based on improving the performance of teachers;
- involve all teachers;
- confirm expectations between teachers and their supervisors about professional responsibilities and the role they play in the school;
- ensure that the individual concerned is able to request;
  - any advice or direction to be in writing,
  - a colleague be present during discussions or interviews, and
  - access to a grievance process.
- ensure that teachers and administrators are treated as professionals;
- be directly linked to School Development Plans and the Department's Strategic Plan;
- promote the growth and development of teachers; and
- operate through supervisory line relationships and can include self evaluation and peer evaluation techniques that maintains that;
  - the authority to act in an area of responsibility lies with the person who is expected to carry it out;
  - the decision about how and what is to be done in order to carry out an area of responsibility lies with the person carrying it out; and
  - the process must be supported by appropriate training and resourcing.

A separate process will be used to address consistently unsatisfactory standard of performance that is not able to remedied through a fair and reasonable performance management system.

13.—FLEXIBLE HOURS

Flexible working hours for teachers will be implemented at schools where:

- an improved curriculum can be offered as a result; or more effective and efficient use of resources occurs;
- a consultative process has occurred at a school level involving all stakeholders, including the Union, school decision making groups, parents, students and staff;
- issues such as duty of care, health, safety and welfare, equity and other legislative requirements have been allowed for;
- workload, career aspirations and family circumstances have been allowed for;
- individual circumstances have been fairly and reasonably considered; and
- the distribution of hours is equitable.

Specifically excluded from these arrangements are longer working hours for teachers, overtime and double shifts. Split shifts are also excluded, unless agreed to by the individual teacher, the consultative process outlined above has occurred, and an appropriate allowance determined and paid.

The successful implementation of flexible working hours depends on:

- local decisions based on determining the best program offerings for students in conjunction with the best use of personnel and facilities;
- participative decision making; and
- a diversity of models.

14.—SELECTION AND TRANSFER OF SCHOOL BASED STAFF

In order to achieve a better match between schools and their staff, the parties agree to develop and implement a set of strategies which includes:

- the continuation of the central transfer system; and
- local selection of teachers within an agreed school profile.

The parties will work together to improve the operations of the central transfer and deployment system for all teachers.

The Department will continue to "quarantine" sufficient vacancies to ensure transfer opportunities for such staff as those returning from the remote teaching service and for forced and compassionate reasons.

As far as the local selection strategy is concerned, there will be a jointly co-ordinated implementation in a number of schools, including

- an agreed process for selecting schools;
- a consistent and equitable process to accommodate participation in local selection;
- the costs of local selection to be funded through an enhanced school grant; and
- central involvement in local selection to assist in managing and resourcing the process.

The parties further agree that implementation of school based staff selection will:

- not involve the whole system;
- be phased in gradually for schools selected;
- include a broad spectrum of schools, that is, schools of varying size, type, geographic location and socio-economic environment;
- be based upon the selection process standards mandated under the Public Sector Management Act; and
- be managed at the school level by the Principal, according to the Public Sector Standards, implemented by the administrative team and monitored by the District Superintendent. Equal opportunity requirements will be observed.

The link between improved country incentives and the introduction of the school based staff selection strategy is acknowledged.

The local selection process will only be used where a vacancy has occurred through transfer, promotion, retirement or any other reason constituting a permanent move from the position. The capacity of the Director-General to transfer staff will remain.

The parties agree to a comprehensive and ongoing joint monitoring and assessment of the implementation of local selection of staff, including the commissioning of a report with recommendations from an independent person or body agreed to by the parties. A final report will be presented at the end of 1997. The process of review will ensure the smooth and flexible implementation of the program, and a full and proper evaluation of the systemic and school level consequences of its introduction.

Upon registration of this Agreement the parties will jointly determine the objectives and criteria for assessment of the strategy, and will determine who shall conduct the formal evaluation of it. The assessment will consider, amongst other things, the effects upon student learning and student needs, the aspirations of teaching staff, staff mobility and turnover with reference to equity issues and access to desirable locations, and the ability of the school to deliver alternative education programs.

15.—SCHOOL STAFFING PROFILES

The parties acknowledge that the current rigid staffing formulae used to staff schools may not assist in meeting the requirements of the School Development Plan and the educational priorities contained within the plan.

To assist schools in achieving a better match between the school and its staff, all schools for 1997 will be required to produce by the end of Semester 1 1996, a statement based on guidelines agreed to by the parties to assist teachers wishing to promote or transfer.

All staff newly appointed to these schools, either by promotion or transfer, are expected to be supportive of the school's School Development Plan and relevant decisions made during the past year for the current year.

School staffing profiles will be addressed in the context of selection and transfer of school based staff and as part of the new career structure for classroom teachers and administrators developed by the parties during 1996.

It is acknowledged by both parties that, for the life of this Agreement, changes in staffing profiles should not:

- lead to a reduced number of promotional opportunities below agreed systemic benchmarks;
- decrease the mobility of teachers desiring to promote or transfer; or
- ignore access and equity considerations.

16.—PROFESSIONAL DEVELOPMENT

Professional development and training involve responsibilities on the part of both the employer and employee.

The Department will resource professional development and career training for teachers and to meet the obligation to maintain and update teachers' professional skills.

Until guidelines are developed between the parties for 1998, teachers are expected to plan and do a minimum of 20 hours of professional development during 1996 and 30 hours during 1997, with up to 50% being undertaken in school time on the understanding that:

- it is primarily on School Development and Planning Days;
- it minimises the disruption to students' instructional programs; and
- it should not require any enhancement of the teacher relief component of the School Development Grant.

The parties agree:

- that professional development should incorporate teachers' personal professional requirements, including career aspiration matters, school development planning requirements and long term system requirements;
- to the concept that teachers and administrators should carry out some professional development outside of instructional hours; and
- to establish standards against which professional development can be accredited.

The parties will resolve, by the end of Semester1 1996, for implementation in Semester 2 1996, the following:

- categories of professional development and what are the responsibilities relating to them;
- how professional development activity should be accredited; and
- equity issues such as access to quality professional development for country teachers and those employees with family responsibilities.

It is proposed that the following broad criteria be used as the basis for recognising the required professional development. The professional development activity should:

- demonstrate evidence of educational planning and organisation;
- be based on a clear purpose;
- be linked to enhancing knowledge, or skills that will lead to improved student learning;
- enable teachers to reflect on their current practices;
- typically involve teachers in collaboration with other teachers;
- typically lead to follow up activity such as further research, discussion, experimentation or collaboration.

Examples of professional development activities which should automatically contribute to the requirement include:

- professional conferences;
- department sponsored professional development programs;
- professional workshops and seminars;
- university or tertiary courses undertaken to improve credentials related to teaching;
- planned professional development activities as part of school development and planning days conducted within schools by school, district and central office personnel or professional development consultants;
- the Union as a professional development provider may undertake some professional development delivery for teachers beyond instructional hours.

It is further proposed that during 1996 the management and monitoring of the professional development activities be undertaken at school level within guidelines developed with the Union.

17.—GRIEVANCE PROCEDURES

The workplace grievance procedures prescribed in Clause 39 of the award will be revised and amended according to the following principles:

- the procedure will contain two levels;
- the levels will be the work site and the district;
- if the issues raised by the grievance have system wide ramification, the matter will be dealt with by the Director-General and the President of the Union, or their nominees, and such other person(s) who are referred to in subclause 10(2) of the School Administrators Enterprise Bargaining Agreement;
- it would be appropriate in exceptional circumstances which involved the relationship between School Administrators and the District Superintendent, that resolution may need to go beyond the immediate district; and
- reasonable time will be provided for elected Union representatives to attend to grievances at the worksite.

18.—COUNTRY INCENTIVES

The parties agree to establish a country incentives working party to review the current range of incentives and allowances paid to country teachers. Such a review will consider, amongst other things, the following matters:

- the current levels of gas, air conditioning and water subsidies;
- issues relating to tax instalments deducted from expense allowances;
- further adjustments to the cash bonus scheme; and
- changes to the manner in which travel and related allowances are paid when teachers proceed on leave.

The parties also agree:

- to allow employees who have an accrued entitlement to an annual leave travel concession pursuant to subclause 23(1) of the award to use the concession for urgent private business. Employees who do not have an accrued entitlement may use the concession but will be required to agree to return to the location to work for the remainder of the year;
- that the married rate of district allowance will continue to be paid into the following year for those employees who have an entitlement to such an allowance, provided that the onus is on the employee to advise the Department of a change in circumstances that warrant a change to the allowance;
- that the cash bonus otherwise accruing to a teacher at the end of their third year of service will be paid on a pro rata basis to a teacher who is force transferred from their location during the third year in that location; and
- that a process will be established enabling teachers who are required to share accommodation to consult with one another prior to occupation.

19.—OCCUPATIONAL HEALTH, SAFETY AND WELFARE

The parties agree to:

- a jointly developed and agreed Occupation Health, Safety and Welfare policy on the resolution of such issues in the Education Department be attached to this Agreement;
- a further comprehensive agreed Occupation Health, Safety and Welfare policy on:
  - consultative procedures between the Union and Department,
  - a process for the rehabilitation of injured workers, and
  - a process for dealing with discriminative practices aimed at employees,

  which will be jointly developed during Term 1 for implementation during Semester 2 1996;
- the leadership course to up skill senior administrators on OHSW issues to continue to be offered.

20.—CLASS SIZES

The Department agrees to commission an enquiry into the implications on learning of changed class sizes. This enquiry will include examination of relevant domestic and international research and will be completed during the life of this Agreement.

21.—LEAVE

The parties agree to collaborate on amendments to the award leave arrangement of teachers to enable attendance at Aboriginal and Torres Strait Islander forums such as ATSIC and Reconciliation Councils.

The parties further agree that

- the parental leave provision contained in the Minimum Conditions of Employment shall be available to teachers covered by this agreement;
- leave to attend to family illness up to three days per year will be made available during the first year of this agreement. Such leave shall be deducted from an employee's accrued sick leave entitlement. Any continuation beyond the first year will be at the discretion of the Director-General following a joint assessment to determine the benefits and costs of the proposal.

22.—CURRICULUM DEVELOPMENT

The Department will provide appropriate resources and training for the implementation of new curriculum initiatives.

23.—INTERPRETATION

Where a dispute or potential dispute concerning the true interpretation of this Agreement arises it shall be considered jointly by the Director of Industrial Relations or his nominee and an officer of the Union who shall attempt to resolve the issue.

If agreement as to the true interpretation of the Agreement cannot be reached, the matter may be referred by either party to the Industrial Relations Commission for determination.

24.—LODGEMENT

The parties agree to lodge this Agreement for registration with the Australian Industrial Relations Commission and the Western Australian Industrial Relations Commission.

25.—SIGNATURES

Signed on the 6th day of March,1996.

(Signed)
.....
JERRY SKIVINIS
A/DIRECTOR-GENERAL
EDUCATION DEPARTMENT OF WA
ON BEHALF OF THE
MINISTER FOR EDUCATION

(Signed)
.....
BRIAN LINDBERG
PRESIDENTUNION OF WA (INC)
AUSTRALIAN EDUCATION UNION (WA BRANCH)/STATE SCHOOL TEACHERS' UNION OF WA (INC)

SCHEDULE A—SALARIES

SALARY GRADE	AWARD	7.50% (Effective 1/1/96)	7.50% (Effective 1/1/97)
Teachers	$	$	$
11TT	21734.00	23364.00	25116.00
12TT	22863.00	24578.00	26421.00
13TT	24181.00	25995.00	27944.00
14TT	25224.00	27116.00	29149.00
15TT	26856.00	28870.00	31035.00
16TT	28437.00	30570.00	32863.00
17TT	30502.00	32790.00	35249.00
18TT	31877.00	34268.00	36838.00
19TT	34117.00	36676.00	39426.00
21TT	35165.00	37802.00	40638.00
22TT	36621.00	3936800	42320.00
23TT	39367.00	42320.00	45493.00

SALARY GRADE	AWARD $	7.50% (Effective 1/1/96) $	7.50% (Effective 1/1/97) $
Education Officers			
11EO	32068.00	34473.00	37059.00
12EO	33879.00	36420.00	39151.00
13EO	35686.00	38362.00	41240.00
14EO	37497.00	40309.00	43332.00
15EO	39304.00	42252.00	45420.00
16EO	41112.00	44195.00	47510.00
17EO	42452.00	45636.00	49059.00
21EO	43796.00	47081.00	50612.00
22EO	45420.00	48827.00	52488.00
23EO	47258.00	50802.00	54613.00
31EO	49276.00	52972.00	56945.00
32EO	50537.00	54327.00	58402.00
33EO	51800.00	55685.00	59861.00
School Psychologists			
11PY	29504.00	31717.00	34096.00
12PY	31313.00	33661.00	36186.00
13PY	33124.00	35608.00	38279.00
14PY	34931.00	37551.00	40367.00
15PY	36738.00	39493.00	42455.00
21PY	38545.00	41436.00	44544.00
22PY	40356.00	43383.00	46636.00
23PY	41981.00	45130.00	48514.00
24PY	43608.00	46879.00	50395.00
31PY	46207.00	49673.00	53398.00
32PY	47246.00	50789.00	54599.00
33PY	48287.00	51909.00	55802.00
41PY	49732.00	53462.00	57472.00
42PY	50756.00	54563.00	58655.00
43PY	51800.00	55685.00	59861.00

SALARY GRADE	AWARD $	7.50% (Effective 1/1/96) $	7.50% (Effective 1/1/97) $
School Development Officers			
11SD	31016.00	33342.00	35843.00
12SD	32828.00	35290.00	37937.00
13SD	34635.00	37233.00	40025.00
14SD	36446.00	39179.00	42118.00
15SD	38249.00	41118.00	44202.00
16SD	40057.00	43061.00	46291.00
17SD	41401.00	44506.00	47844.00
Counselling Assistant			
04AA	26173.00	28136.00	30246.00
05AA	27714.00	29793.00	32027.00
08AA	32568.00	35011.00	37636.00
09AA	33980.00	36529.00	39268.00
10AA	35386.00	38040.00	40893.00
11AA	36812.00	39573.00	42541.00
Guidance Officers 2			
04AC	28386.00	30515.00	32804.00
05AC	29992.00	32241.00	34660.00
06AC	31624.00	33996.00	36545.00
07AC	33263.00	35758.00	38440.00
08AC	34899.00	37516.00	40330.00
09AC	36315.00	39039.00	41967.00
10AC	37734.00	40564.00	43606.00
11AC	39159.00	42096.00	45253.00
Guidance Officers 1			
01NC	39280.00	42226.00	45393.00
02NC	39994.00	42994.00	46218.00
03NC	40712.00	43765.00	47048.00
04NC	41426.00	44533.00	47873.00
05NC	42145.00	45306.00	48704.00

SCHEDULE B—TARGETS

	On registration of the Agreement	By 30 June 1996	By 31 December 1996	By 30 June 1997
Carer Structure	Commence development of new structure.		Complete development of structure in the context of Performance Management, School Staffing Profiles and Professional Development initiatives.	Commence implementation for 1998.
Staff Meetings	Commence implementation.			
Performance Management	Implementation plan developed.		Initial training for performance management planned.	Commence implementation for all staff.
Flexible Hours	Commence implementation in some schools.			
Selection and Transfer of School Based Staff	Commence work on strategies, including assessment criteria and objectives.	Strategies finalised and available for implementation.	Ongoing implementation and review.	-Ongoing review and evaluation. -Progress report received.
School Staffing Profiles	Commence work on guidelines.	All schools submit school profile.	Ongoing implementation and review.	-Ongoing review and evaluation. -Progress report received.
Professional Development	Commence process for accreditation and development of guidelines for implementation.	-Process for Professional Development developed. -Monitoring commenced.		Review of PD requirement.
Grievance Procedures		Awards varied and new procedures implemented.		
Country Incentives	-Implement new initiatives. -Commence review.		Review completed.	
Occupation Health Safety and Welfare.	Commence development of policy.	Complete development.		
Class Sizes	Commission an enquiry.			Complete enquiry.
Leave Entitlements	Commence discussion.	-Discussions complete. -Award varied.		
Curriculum Development	Fully implemented.			

GOVERNMENT SCHOOL TEACHERS' ENTERPRISE AGREEMENT 1996

At the time this Agreement was lodged for registration with the Western Australian Industrial Relations Commission, there were approximately 17,315 teachers covered by the proposed Agreement.

INGHAMS PTY LTD (MAINTENANCE DEPARTMENT) ENTERPRISE BARGAINING AGREEMENT 1995.

No. AG 77 of 1996.

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 Others

and

Inghams Enterprises Pty Ltd.

No. AG 77 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

29 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and also on behalf of Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch) and Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and there being no appearance 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 following schedule titled the "Inghams Pty Ltd (Maintenance Department) Enterprise Bargaining Agreement 1995", signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 29th day of April 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Inghams Pty Ltd (Maintenance Department) Enterprise Bargaining Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Date and Period of Operation
5. Relationship to Parent Award
6. Single Bargaining Unit
7. Background
8. Continuous Improvement Activities
9. Wages
10. Hours
11. Commitments
12. Renewal of Agreement
13. Settlement of Disputes
Signatories to Agreement.

3.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to and be binding upon Inghams Enterprises Pty Ltd, the organisations of employees set out below and all persons employed by Inghams Enterprises in its operations at Baden Street, Osborne Park who are, or eligible to be, members of the following Unions—

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (AFMEPKIU);

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia (W.A. Branch) (CMEU);

Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division—W.A. Branch (CEPU);

(2) The estimated fourteen persons employed by the Company, referred to in subclause (1) hereof, are covered by the provisions of the Metal Trades (General) Award No. 13 of 1965, the Engine Drivers' (General) Award No. 21A of 1977 or the Electrical Contracting Industry Award No. R22 of 1978.

4.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the commencement of the first pay period beginning on or after 15th December 1995 and shall remain in force until 15th December 1997.

5.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read and interpreted wholly in conjunction with the applicable Awards specified in sub-clause (2) of Clause 3.—Incidence and Parties Bound.

(2) Where there is any inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of such inconsistency.

6.—SINGLE BARGAINING UNIT

(1) The employees and Unions covered by this Agreement have formed a single bargaining unit in accordance with the requirements of the Western Australian State Wage Case Decision in January 1992.

(2) The single bargaining unit has held negotiations and reached full agreement on the terms of this document.

(3) The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation of the continuing improvement programme.

7.—BACKGROUND

(1) The parties to the Awards referred to in Clause 3.-Incidence and Parties Bound of this Agreement see this document as a continuing programme of restructuring and consolidation of the Structural Efficiency Principles introduced as a result of the 1987 State Wage Decision.

(2) The parties recognise that this Agreement, along with amendments to the parent Awards and considerations which may come into place during the term of this Agreement, shall lead to the fruition of the Structural Efficiency Principles introduced in 1987.

(3) Fundamental to maintaining results already gained and to further commit the parties to continual Structural Efficiency reform, the following initiatives have been undertaken—

(a) A properly constituted Training Committee has been established to implement and monitor both on-the-job and accredited training and to develop skill-based career paths for all maintenance employees at Inghams Enterprises.

(b) An on-going career structure is being implemented which will result in autonomous work groups having added responsibility. The parties are committed to an ultimate objective of employees taking responsibility or the efficiency, control and quality of the manufacturing process.

(c) A transition process has been achieved whereby all existing in-house classifications have been deleted and all employees reclassified according to Award career path levels.

(d) Regular meetings of the Single Bargaining Unit have resulted in information sharing and problem solving instrumental to greater understanding and tolerance between management and employees.

(4) The parties recognise the achievements the engineering team has made to date, particularly in relation to flexibility of duties performed and team commitment.

8.—CONTINUOUS IMPROVEMENT ACTIVITIES

(1) The parties are committed to an on-going programme of continuous improvement during the term of this Agreement, which includes—

(a) Flexibility of working hours.

(b) Adherence to production hours requirements—i.e. Public Holidays.

(c) Coverage of extended working hours to include changes to the implementation of a 38-hour week—

(i) Any change to be after consultation and agreement between the parties.

(ii) Any changes to the 38-hour week will not attract additional wage claims, providing the change is within the current Award Guidelines.

(iii) Any change to be compatible with the working hours of the production process.

(2) Productivity Objectives :

(a) Work within a Hot Work Permit System.

(b) Working in confined spaces.

(c) The carrying out of rescue team requirements.

(d) Training in areas of rescue—eg. Troll, M.S.A. gas testing, S.C.B.A., Fire Control.

(e) First Aid Training.

(f) Forklift Driving Experience.

(g) Acceptance by all staff to work towards an effective reduction in absenteeism levels.

9.—WAGES

In addition to the rates and allowances prescribed by the said Awards, upon ratification of this Agreement by the Western Australian Industrial Relations Commission, the following increases, applicable on the all-purpose rate, shall be paid to all employees covered by the Awards specified in subclause (2) of Clause 3 hereof, who fully participate in and support this Agreement.

4% increase from 15th December 1995.

2% increase from 1st March 1996.

3% increase from 15th December 1996.

3% increase from 15th July 1997.

10.—HOURS

(1) Ordinary hours of work shall be 38 per week, worked between 6.00 a.m. and 6.00 p.m. Monday to Friday and of eight hours duration daily.

(2) Variation of starting and finishing times each day may be required on specific occasions to suit the requirements of customers and, by arrangement between the employer and employees, such flexibility may be extended.

(3) Time worked outside of ordinary hours will be paid at penalty rates, as prescribed by the relevant Award.

11.—COMMITMENTS

(1) Pursuant to the terms of the December 1994 State Wage Case decision, there shall not be any further claims made during the life of this Agreement, except where consistent with a State or National Wage Case decision.

(2) The parties to the Agreement shall be bound by the terms of the Agreement for its duration.

(3) The parties shall oppose any applications by others to be joined to this Enterprise Bargaining Agreement.

(4) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(5) This Agreement shall not operate to cause any employee to suffer a reduction in ordinary-time earnings or to depart from national standards in regard to hours of work, annual leave with pay or long service leave with pay.

12.—RENEWAL OF AGREEMENT

(1) One month prior to its expiry the parties will review this Agreement to assess improvements in productivity and efficiency.

(2) Depending on the outcome of such review, the parties will decide whether or not the Agreement shall be renewed or replaced.

13.—SETTLEMENT OF DISPUTES

Where a question, dispute or difficulty arises the matter shall be dealt with in accordance with Clause 31 of the Metal Trades (General) Award 1966.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of
Inghams Enterprises Pty Limited -
Mr Manning
27/2/1996.

Signed for and on behalf of the
Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union of
Workers—Western Australian Branch -
J. Sharp-Collett (seal affixed)
15/3/95.

Signed for and on behalf of The
Construction, Mining, Energy,
Timberyards, Sawmills and Wood-
workers' Union of Australia (W.A.
Branch)-
Bill Ethol (seal affixed)
15/3/95.

Signed for and on behalf of the
Communications, Electrical,
Electronics, Energy, Information,
Postal, Plumbing and Allied Workers
Union of Australia, Engineering and
Electrical Division (W.A. Branch) -
Mr J. Fiala
6/3/96.

LANDCORP ENTERPRISE AGREEMENT 1996.
No. PSA AG 121 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia (Incorporated)

and

Western Australian Land Authority (LandCorp).

No. PSA AG 121 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R. H. GIFFORD.

23 May 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT.

No. PSA AG 121 OF 1996.

Having heard Mr R. O'Byrne on behalf of the Applicant and Mr G. Lewis 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 LandCorp Enterprise Agreement 1996, No. PSA AG 121 of 1996, 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 LandCorp Enterprise Agreement 1996, No. PSA AG 121 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Employees to be Covered by this Agreement
5. Parties to the Agreement
6. Definitions
7. Date and Period of Operation of the Agreement
8. No Further Claims
9. Relationship to Parent Award
10. Single Bargaining Unit
11. Audit of 4% Second Tier and 1989 SEP
12. Objectives and Principles
13. Past Productivity Improvements
14. Productivity Improvement Plan
15. Productivity Measurement
16. Salary Increases
17. Hours of Duty
18. Special Family Leave
19. Ceremonial/Cultural Leave
20. Dispute Settlement Procedure
21. Signatures of Parties to the Agreement
Schedule A—Salary Schedule

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all LandCorp employees including Senior Executive Service employees working in LandCorp who are members of or eligible to be members of the Association party to this Agreement (currently 45 FTEs).

4.—EMPLOYEES TO BE COVERED BY THIS AGREEMENT

The number of employees covered by this Agreement is 56.

5.—PARTIES TO THE AGREEMENT

(1) Employer

Western Australian Land Authority hereafter referred to as LandCorp

(2) Union

Civil Service Association of Western Australia (Incorporated)

6.—DEFINITIONS

"Agreement" the LandCorp Enterprise Agreement 1996

"Business Unit" a discrete group within LandCorp which provides defined services and products for internal and external customers

"Authority" LandCorp

"Employee" for the purposes of this Agreement, someone who is referred to at Clause 3.—Scope of the Agreement

"Employer" Western Australian Land Authority hereafter referred to as LandCorp

"Government" the State Government of Western Australia

"Minister" the Minister or Ministers of the Crown responsible for the administration of LandCorp

"Union" the association listed as a party to this Agreement

"WAIRC" the Western Australian Industrial Relations Commission

7.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement shall operate from 1 January 1996 and shall remain in operation for a period of 18 months from the date of registration.

(2) The parties will review this Agreement six months prior to the expiration of this Agreement to commence negotiations for a new agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement, subject to the continuation of efficiency measures contained in this Agreement.

(5) This Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from this Agreement by notification in writing to the other party and to the Western Australian Industrial Relations Commission (WAIRC).

8.—NO FURTHER CLAIMS

(1) The rates of pay shall be as per Schedule A for the life of this Agreement.

(2) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

9.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Government Officers' Salaries Allowances and Conditions Award 1992 which applies to the parties bound to this agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

10.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from LandCorp and the Civil Service Association of Western Australia (Incorporated) (CSA).

11.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

12.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are:

(1) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(2) To achieve LandCorp's mission and improve productivity and efficiency in LandCorp through ongoing improvements.

(3) To promote the development of trust and motivation and to continue to foster enhanced employee relations.

(4) To facilitate greater flexibility in decision making and allocation of human and other resources.

(5) To promote increased satisfaction from jobs and secure employment opportunities.

(6) To develop and pursue changes on a co-operative continuing basis by using participative practices.

(7) To promote health, safety, welfare and equal opportunity for all employees.

13.—PAST PRODUCTIVITY IMPROVEMENTS

The following initiatives are provided in support of past productivity gains:

(1) Structural Reform

(a) In November 1993, the organisation commenced a significant restructure exercise resulting in a reduction of FTEs and a reduced use of temporary staff.

(b) The restructure exercise has still to be finalised and the full effects continue to be reflected in work practices which improve productivity to take account of reduced human resources.

(2) Planning

A structured corporate planning process was implemented and the first phase successfully completed.

(3) Land Delivery—Volume

(a) An increased volume of projects has been undertaken with reduced staffing level. Each project involves considerable allocation of resources from acquisition through planning, development and marketing.

(b) LandCorp has significantly expanded its operations in non-metropolitan areas with planning commencing in major new projects (Albany, Bunbury, Carnarvon, Geraldton and the Pilbara).

(c) LandCorp has provided advisory support to other agencies for the identification and disposal of surplus land assets (eg. the proposed development of Exmouth and the investigation of alternative uses for the Midland Westrail Workshops).

(4) Land Delivery—Scope

(a) LandCorp's role has expanded from that performed by the previous agencies and now incorporates:

(i) market moderation ie. to ensure a competitive element in the market

(ii) regional development

(iii) increased liaison with private sector partners

(iv) increased liaison with local government authorities

(v) greater levels of consultation—often outside normal business hours and in remote locations

(5) Land Delivery—Complexity

(a) Involvement in joint ventures and contracting out has resulted in increased project management/ supervision responsibilities.

(b) Increasingly complex environmental assessment procedures have placed an additional burden on the process of site identification and obtaining development approvals.

(c) Additional work is now required to address native title issues.

(6) Administrative Procedures

(a) LandCorp has complied with increasing statutory requirements in this area, including reporting.

(b) A Customer Service Charter was developed to address the needs of stakeholders and customer-focussed initiatives were identified and implemented in the following areas:

(i) communication

(ii) land development

(iii) property management

(iv) conveyancing services

(v) creditor payment

(vi) freedom of information

(c) Customised database systems (Land Management System, Project Management Information System) have been reviewed, developed and implemented, including training and staff development.

(d) Enhanced records management policies and procedures were developed and implemented following a major review of existing systems.

14.—PRODUCTIVITY IMPROVEMENT PLAN

LandCorp's objective is to provide a responsive land development service to the Western Australian community. The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of LandCorp. The parties agree to develop and implement productivity improvements by way of:

(1) BankWest Land Operations

The land development activities of BankWest will be assumed by LandCorp. This section of the bank previously employed 3 Project Managers and 2 support staff to run their projects. LandCorp is to assume responsibility for the majority of the portfolio with only one staff member being transferred across—a saving of 4 FTEs.

(2) Public Sector Reforms

(a) Implementation of the Hilmer reforms which are designed to place public agencies on an equal footing with the private sector. LandCorp will be required to implement the administrative requirements of the Tax Equivalents Regime.

(b) Development and implementation of supplier quality assurance systems for competitive tendering and contracting out.

(c) Implementation and maintenance of the requirements of the Government Property Register. This will represent a significant burden, particularly in comparison to other government agencies as land development is Landcorp's primary focus of activity and there is a far greater volume of land holdings and land movements.

(3) Strategic Initiatives

(a) On-going development of the corporate planning process involving planning for business units linking their activities to corporate objectives.

(b) Communication activities will be reviewed to provide a greater strategic focus, involving:

(i) closer liaison with key stakeholders

(ii) developing a corporate promotional package

(iii) a more co-ordinated and consistent approach as well as a monitoring function.

(c) A joint research project will be undertaken with the Valuer General's Office to establish data on the operations of the residential land market throughout the metropolitan area.

(4) Continuous Improvement

(a) Development of project management skills ie. the use of Gantt and PERT charts, Critical Path analysis etc will be finalised across LandCorp, reducing the length of time costs are tied up during development.

(b) The application of Economic Stock Reorder theory will reduce the amount of time cost is tied up in stock holdings.

(c) The pooled project management database will be enhanced to allow for improved time management.

(d) Continuous budgeting and forecasting methodology to be implemented.

(e) New technology and management systems including project management, financial, administrative and records management areas to be developed and implemented.

(f) Control of policy and procedure documents to be centralised and enhanced to allow effective maintenance and ease of access.

(5) Human Resource Management

(a) A flexible approach to the quantum of hours worked to be introduced with each employee negotiating with their supervisor hours up to 40 per week (38 hour base).

(b) Flexible working hours will be adopted to recognise the volatile nature of the industry. This will reduce underutilised staff time during slow periods and allow additional projects/ work loads during peak periods to be managed within existing staff levels. It will also address the operational requirements for travel and consultation outside of "normal" working hours.

(c) Training needs audit to be completed and individual training and development plans implemented.

(d) Further develop multi-skilling to allow greater flexibility in deploying human resources and reduce the need for "temporary" assistance.

(e) Cross-divisional, regionally-based work teams will be implemented to allow for co-ordinated planning of land development across Western Australia.

(6) Customer Focus

(a) The Customer Service Charter will be reviewed and performance against indicators is to be targeted for improvement.

(b) A quality customer service ethic is to be established throughout LandCorp.

(c) LandCorp's business hours will be extended to 8.00 am—5.30 pm to allow greater access to customers and the general public.

(7) Resource Allocation

Significant additional resources will be allocated to the identification, planning, acquisition and development of industrial land throughout the State. In particular, the need for further heavy and general industrial sites has been identified.

The parties agree that increased productivity be achieved through the implementation of agreed quality management concepts, including team based approaches to improve productivity. The strategies and initiatives introduced over the life of this Agreement will impact significantly on work practices, customer service and employee satisfaction.

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future agreements.

15.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of LandCorp to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of LandCorp are achieved. The parties agree that the targets contained in this Agreement have a primary role in assisting with the attainment of corporate goals in the interests of clients, employees, LandCorp and the government on behalf of the community.

(3) It is agreed that the employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

16.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued co-operation in productivity improvements and/or work practice changes outlined in Clause 13.—Past Productivity Improvements and Clause 14.—Productivity Improvement Plan, of this Agreement.

(2) The first salary increase of 7% (Schedule A—Column A) payable from 1 January 1996, is in recognition of past productivity gains as outlined previously as well as commitment to the Productivity Improvement Plan including:

(a) Introduction of flexible working hour arrangements.

(b) Extension of public access hours to 8.00 am to 5.30 pm.

(c) Commitment to the finalisation of structural change initiatives including introducing cross-division, regionally-based work teams.

(d) Commitment to further multi-skilling to allow greater flexibility in deploying human resources eg. staff employed at Level 4 or below shall perform the duties of any other employee in this group, as requested, to cover absences and reduce the need for "temporaries".

(3) The second salary increase of 2% (Schedule A—Column B) will be based on achieving the following workplace reforms by 30 June 1996 (with no increase in staff numbers) as determined by the WALA Board. This increase will be payable from the first pay period following this date:

(a) Finalisation of structural change initiatives including implementation of cross-division, regionally-based teams eg. teams have formed and presented first 2 reports.

(b) Demonstrated commitment to multi-skilling eg. training audit completed and implementation commenced.

(c) Improved compliance with LandCorp's Customer Focus Charter eg. improvement in performance indicators such as 10% increase in the percentage of correspondence replied to within 5 days.

(d) Satisfactory progress on other initiatives outlined in the Productivity Improvement Plan such as production of Business Unit Plans.

(4) The third salary increase of 2% (Schedule A—Column C) will be based on achievement of productivity gains by 31 December 1996 (with no increase in staff numbers) as determined by the WALA Board. In determining productivity gains, the Board shall have regard for:

(a) Increased scope of work, based on commencement of construction of the following projects ahead of schedule:

(i) Reclamation works and Stage 1, Albany.

(ii) Marlston Hill, Bunbury.

(iii) Canal development, Carnarvon subject to Mabo clearances being resolved.

(b) Increased volume of work:

(i) Successful takeover of BankWest land operations as determined by internal auditors.

(ii) Implementation of LandCorp section of the Government Property Register.

(iii) Completion of the Tax Equivalents Regime requirements.

(c) Decreased costs as defined by:

Administration cost (defined as cost associated with payroll, internal consultants, Board members, travel, office accommodation and sundry office running costs—excludes project expenditure, land studies, marketing, selling and finance costs) as a percentage of the total cost of assets employed (expressed in historical terms) to be reduced to below 2% (in 1995 this ratio was 2.1%).

17.—HOURS OF DUTY

(1) Subject to normal provisions of flexitime as covered by the Award, the ordinary working hours, exclusive of meal intervals, shall be negotiated by each employee and their supervisor to a maximum of 40 hours per week (38 hour base). Such hours shall be worked on Monday to Friday between the hours of 7.00 am and 7.00 pm in a spread of not more than ten hours.

(2) Credit hours may be accumulated to a maximum of 8 hours every settlement period. A settlement period shall consist of 4 weeks.

18.—SPECIAL FAMILY LEAVE

(1) An employee may use a total of 5 days of their accrued sick leave to supervise the convalescence of a family member, provided that satisfactory documentation of the family member's illness is sighted by the employer and that a minimum of 10 days of the current year's entitlement is available for personal sickness.

(2) In this clause "family member" means the employee's spouse, de facto spouse, child, step-child, parent, step-parent, sibling or another person who lives with the employee as a member of the employee's family.

19.—CEREMONIAL/CULTURAL LEAVE

(1) An employee who is legitimately required to be absent from work for their tribal/ceremonial/cultural purposes shall be entitled to take accrued annual leave entitlements or leave without pay.

(2) Such ceremonial/cultural leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities.

(3) Ceremonial leave shall be available but not limited to Aboriginals and Torres Strait Islanders.

20.—DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this industrial agreement will be dealt with in accordance with the following procedures:

(1) The Civil Service Association of Western Australia (Incorporated) Representative and/or the employee(s) concerned shall discuss the matter with the immediate supervisor in the first instance. An employee may be accompanied by a Civil Service Association of Western Australia (Incorporated) Representative.

(2) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (1) hereof the matter shall be referred by the Civil Service Association of Western Australia (Incorporated) Representative to the LandCorp Chief Executive Officer or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the Civil Service Association of Western Australia (Incorporated) Representative's notification of the dispute to LandCorp it may be referred by either party to the Western Australian Industrial Relations Commission.

21.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the
CIVIL SERVICE ASSOCIATION
OF WESTERN AUSTRALIA
(INCORPORATED) by:
D. Robinson

Date: 29 April 1996

Signed for by
LANDCORP:
R. Holt
Ross Holt — CEO
Date: 23 April 1996

SCHEDULE A—SALARY SCHEDULE.

LEVEL	YEAR	AGE	COLUMN A HOURLY	COLUMN B HOURLY	COLUMN C HOURLY
			7%	2%	2%
1		< 17 years	$5.87	$5.99	$6.11
1		17 years	$6.86	$7.00	$7.14
1		18 years	$8.00	$8.16	$8.32
1		19 years	$9.26	$9.45	$9.63
1		20 years	$10.40	$10.61	$10.82
1	1	21 years	$11.42	$11.65	$11.89
1	2	22 years	$11.78	$12.01	$12.25
1	3	23 years	$12.13	$12.37	$12.62
1	4	24 years	$12.48	$12.73	$12.98
1	5	25 years	$12.83	$13.08	$13.35
1	6	26 years	$13.18	$13.44	$13.71
1	7	27 years	$13.58	$13.86	$14.13
1	8	28 years	$13.86	$14.14	$14.42
1	9	29 years	$14.28	$14.56	$14.85
2	1		$14.77	$15.07	$15.37
2	2		$15.15	$15.45	$15.76
2	3		$15.55	$15.86	$16.18
2	4		$15.97	$16.29	$16.62
2	5		$16.41	$16.74	$17.08
3	1		$17.02	$17.36	$17.71
3	2		$17.49	$17.84	$18.20
3	3		$17.98	$18.34	$18.70
3	4		$18.48	$18.85	$19.22
4	1		$19.16	$19.55	$19.94
4	2		$19.70	$20.09	$20.50
4	3		$20.25	$20.66	$21.07
5	1		$21.32	$21.74	$22.18
5	2		$22.04	$22.48	$22.93
5	3		$22.78	$23.24	$23.71
5	4		$23.56	$24.03	$24.51
6	1		$24.81	$25.30	$25.81
6	2		$25.66	$26.17	$26.69
6	3		$26.53	$27.06	$27.61
6	4		$27.47	$28.02	$28.58
7	3		$30.98	$31.60	$32.23
8	1		$32.74	$33.40	$34.06
8	2		$34.00	$34.68	$35.37
8	3		$35.56	$36.27	$37.00
9	1		$37.51	$38.26	$39.03
9	2		$38.83	$39.61	$40.40
9	3		$40.33	$41.14	$41.96
CLASS 1			$42.60	$43.46	$44.33
CLASS 2			$44.88	$45.77	$46.69
CLASS 3			$47.15	$48.09	$49.05
CLASS 4			$49.42	$50.41	$51.42

LEGAL AID COMMISSION OF WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 1996
No. PSG AG 4 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Legal Aid Commission of Western Australia

and

The Civil Service Association of Western Australia (Incorporated).

No. PSG AG 4 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.H. GIFFORD.

28 May 1996.

Order.

REGISTRATION OF AN
INDUSTRIAL AGREEMENT.

No. PSG AG 4 of 1996.

Having heard Mr S. Boyne on behalf of the Applicant and Mr R. Carlton 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 Legal Aid Commission of Western Australia Enterprise Bargaining Agreement 1996, No. PSG AG 4 of 1996, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

(1) This Agreement shall be known as the "Legal Aid Commission of Western Australia Enterprise Bargaining Agreement 1996".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 SEP
11. Objectives and Principles
12. Productivity Improvement
13. Productivity Measurement
14. Dispute Settlement Procedures
15. Salary
16. Contract of Service
17. Part Time Employment
18. Hours of Duty
19. Shift Work
20. Annual Increments
21. Certificate of Service

Leave

22. Ceremonial/Cultural Leave
23. Special Family Leave
24. Parental Leave
25. Annual Leave
26. Long Service Leave
27. Sick Leave
28. Short Leave
29. Bereavement Leave
30. Leave Without Pay
31. Study Leave
32. Defence Force Reserves Leave
33. Witness Service Leave
34. Jury Service Leave
35. Leave for International Sporting Events
36. Leave to Attend Union Business
37. Trade Union Training Leave
38. Public Holidays
39. Public Service Holidays

Allowances

40. Remote Entitlements
41. Higher Duties Allowance
42. Temporary Special Allowance
43. Disturbance Allowance
44. Motor Vehicle Allowance
45. Relieving Allowance
46. Removal Allowance
47. Transfer Allowance
48. Travelling Allowance
49. Weekend Absence from Residence
50. Overtime
51. Appraisal System
52. Private Employment
53. Voluntary Regression
54. Notification of Change
55. Time and Salaries Record
56. Right of Entry
57. Deduction of Union Subscriptions
58. Union Access
59. Re-open Negotitations
60. Signatories

3.—SCOPE

(1) This Agreement shall apply to all Legal Aid Commission of Western Australia employees who are members of or eligible to be members of the Civil Service Association of Western Australia Incorporated.

(2) This Agreement will apply to all employees (approximately 195).

(3) The only exception will be the Director of Legal Aid, who is covered by the Salaries and Allowances Tribunal, and individuals who elect to negotiate a Workplace Agreement with the employer.

4.—PARTIES TO THE AGREEMENT

(1) This Agreement applies to all parties shown below—

(a) The Civil Service Association of Western Australia (Inc)

and

(b) The Legal Aid Commission of Western Australia.

5.—DEFINITIONS

"Agreement": The LAC Enterprise Bargaining Agreement 1996

"Award": Government Officers Salaries, Allowances and Conditions Award 1989

"Casual Employee": An employee engaged by the hour for a period not exceeding one calendar month in one period of engagement as determined by the employer

"Employee": For the purpose of this agreement, someone who is referred to at Clause 3—Scope

"Employer": The Legal Aid Commission of Western Australia

"Full Time Employee": An employee engaged to work 37.5 hours per week

"Government": The State Government of Western Australia

"LAC": Legal Aid Commission of Western Australia

"Part Time Employee": An employee engaged to work less than 37.5 hours per week

"SBU": Single Bargaining Unit

"Union": The Civil Service Association of Western Australia Incorporated

"WAIRC": The Western Australian Industrial Relations Commission

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement shall operate from the date it is registered by the WAIRC and remain in force until 31 December 1997.

(2) The salary increases specified in Clause 15—Salary of this Agreement are payable from 1 January 1996.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements, or continue to apply in the absence of a further Agreement, except where the Award rate is higher in which case the Award shall apply.

(5) The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

(6) Agreement of the Union is subject to confirmation by means of a ballot of its members.

(7) Agreement by the LAC is subject to confirmation by Cabinet.

(8) If the vote by the members of the Union does not support the Agreement, both parties agree to withdraw the application.

7.—NO FURTHER CLAIMS

(1) The parties to the Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted, except for those provided under the terms of this Agreement, or provided in a National or State Wage Decision.

(2) The Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Government Officers Salaries Allowances and Conditions Award (1989) which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a SBU.

(2) The SBU comprises representatives of the LAC and the union.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

(1) The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

(2) A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiative form part of this Agreement.

11—OBJECTIVES AND PRINCIPLES

(1) The shared objectives of the parties are—

(a) To satisfy the requirements of clients, through the provision of quality legal services.

(b) To achieve the LAC's mission and improve productivity and efficiency within the LAC through ongoing improvements.

(c) To develop and pursue changes on a co-operative continuing basis using participate practices.

(d) To promote the process of continuing improvement through the achievement of productivity, efficiency and quality goals as outlined in the business plans.

(e) To enable employees to share in the greater benefits which flow from the productivity, efficiency and quality goals of the LAC.

12—PRODUCTIVITY IMPROVEMENT

PRODUCTIVITY IMPROVEMENT

(1) The LAC has developed a strong change oriented culture since the early 1990's. This development has been driven by both management and staff in recognising that continuous improvement is needed in order to meet the organisations goals. The organisation faces the challenge of meeting constantly growing demands for its services against a fixed funding situation. In order to meet more of this demand it has been essential to become more focussed, more responsive to needs and to identify new ways of providing essential services to our client groups.

(2) During the last three years the organisation has faced many issues—

(a) the Dietrich and Re K decisions which have had major impact upon our ability to fund "traditional" LAC activities;

(b) the escalation in the cost of providing justice through litigation and traditional legal services;

(c) the National Legal Aid Advisory Counsel, Sackville Reports and 1995 Justice Statement which gave clear directions as to the nature of service delivery to be undertaken by Legal Aid Commissions throughout Australia;

(d) Auditor General's Report into the operation of the LAC (1995);

(e) Joint Commonwealth and State Review into the LAC (1996);

(f) Continuing pressure on funding.

(3) The many productivity improvements implemented throughout the last 5 years have assisted the LAC to meet the challenges it faces. The process of restructuring has ensured the maximum deployment of staff in service delivery areas.

(4) The process of productivity improvement within the LAC is continuing.

(a) Past Productivity

LAC and the Civil Service Association of Western Australia (Inc) agree that between the period 1991—1995 there have been a range of measures introduced by the LAC to improve productivity, efficiency, flexibility, and quality.

In summary these measures include (but are not limited to)—

- Rationalisation of Court appearances in the Criminal Law Section;
- Management of the guilty pleas by the in house practice;
- Development of minor assistance program;
- Extension of the information and referral services in Perth and the Regional Offices;
- Extension and development of community legal education programme;
- Introduction of telephone advice services;
- Family Court Information Sessions managed through Community Resource Unit;
- Legal Aid Conference;
- Client surveys;
- Adoption of best practices and changes to file management in Legal Services Section;
- Introduction of Automatic Costing System;
- Production of certificates on letter head;
- Direct data entry by Legal Services assessors;
- Introduction of Uniform Eligibility Guidelines;
- Abolition of positions in Planning and Corporate Development Division;
- Abolition of Cost Consultancy;
- Increased productivity and cost saving in Information Technology Section;
- Introduction of paralegal officer into Fremantle Office;
- Establishment of Domestic Violence Legal Unit;
- Establishment of Goldfields Regional Office;
- Law Reform submissions and test cases undertaken.

Whilst many of these initiatives are very difficult to cost in real terms, the overall value of the past productivity improvements is sufficient to justify a salary increase to staff.

(b) Future Productivity Improvements

LAC and the Civil Service Association of Western Australia (Inc) agree that a range of additional measures to improve future productivity, efficiency, flexibility and quality have been identified and will be implemented during the term of this Agreement.

(5) The parties agree that both the past and future productivity improvements are substantial and that recognition of these improvements will be incorporated in the salary increase percentage applicable to this Agreement.

(6) The following information is provided in support of the LAC's proposed application for a pay rise for its employees based on past productivity gains and prospective gains attributable to labour relations initiatives implemented from November 1991 and on-going.

(7) PRODUCTIVITY IMPROVEMENT PROGRAMS

(a) The parties are committed to a philosophy of continuous improvement throughout the LAC as essential to achieving its Mission and goals.

(b) LAC must balance prudential financial management with stated service commitment to our clients.

(c) Basic input/output models of productivity that focus entirely on quantitative measures are insufficient to measure the improvements attained by the parties.

(d) The parties commit to the productivity improvement measures identified in the organisation's strategic plan and individual operational business plans. These focus efforts at all levels of the organisation on achieving key result areas, principally through formal employee performance management and development and continuous investment in enhancing employee competence.

(e) Continuous investment in performance management and achievement of business plan objectives will deliver real benefit to the organisation through achievement of corporate mission and goals. Ultimately of course, the community benefits from increased access to justice.

(f) LAC has established targets for its key service delivery areas through the business planning process.

(g) These targets are summarised below, by program:

Program 1

Legal Representation (1)

Inhouse Assignments—

Target: To undertake 3,766 inhouse assignments between 1 January 1996 to 30 June 1997.

Automatic Costing Figures:

Target: To generate $4,955,250 in ACS figures between 1 January 1996 and 30 June 1997.

Duty Lawyer (2)

Target: To assist 29,046 clients between 1 January 1996 and 30 June 1997.

Advice & Minor Assistance (3)

Target: To assist 27,727 clients in advice bureaux and 2,751 through minor assistance between 1 January 1996 and 30 June 1997.

Mediation (4)

Target: To work towards development of a cost effective means of dispute resolution.

Information and Referral (5)

Target: To assist 58,268 clients between 1 January 1996 and 30 June 1997.

Publications (6)

Target: To continue process of review of publications and ensure plain English is used.

Community Legal Education (7)

Target: To run 320 CLE programmes between 1 January 1996 and 30 June 1997.

Program 2

The targets relating to in house assignments and costing relate to this program.

Program 3

Test cases

Target: To undertake test cases, law reform or policy issues.

(h) **OTHER BUSINESS AREA TARGETS:**

Legal Services Section

Target: To process 10% of applications for legal aid on the same day.

Target: To certify 99% of accounts within 30 days.

Target: To respond to all correspondence within 10 days.

Target: 20% of decisions reversed by the Review Committee.

Target: To conduct a manual correspondence survey to establish amount of correspondence before initial decision is made on an application for legal aid.

Target: To assess 90% of applications for legal aid within published guidelines and practices.

Child Support Unit

Target: During the lifetime of this Agreement the section will examine the possibility of introducing measures to increase greater responsiveness to clients.

Human Resources

Target: To undertake training for all staff involved in selection.

Target: To develop selection guidelines consistent with Public Sector Standards.

Target: To develop classification review kit for managers and staff.

Target: To update the policy manual and identify areas for future policy development.

Target: To provide every manager and supervisor with a copy of the policies.

Target: To provide training in the key policy areas.

Target: Management training to provide supervisors with the skills to effectively manage performance.

Target: To develop structured training programs to reflect individual objectives.

Target: To develop specific in house training programs as requested.

Target: To identify one EEO target group and set in place one program to assist this group.

Target: To include stress management into training plan.

Target: To measure absenteeism as an indicator of organisational health.

Target: To provide training to managers and supervisors in conflict resolution.

Target: To provide training in disciplinary procedures and the management of substandard performance.

Finance

Target: The maintenance of accounting and financial management information systems as will allow confirmation that all Commission revenues and expenditures are brought to account.

Target: Introduce a timetable for Commission budget preparation and process which is compatible with Treasury Program Estimates process.

Target: Provide management with financial information which enables a transition to accrual accounting by linking funding to the achievement of budget results and performance indicators.

Target: To review policies and practices in relation to client contributions to maximise self-generated revenue.

Target: To review format and distribution of Accounts Manual.

Target: To review existing function with Finance Section with a view to streamlining and reducing the cost of production.

Target: To automate and decentralise the generation of routine statistical reports and replace with an analytical overview.

Target: To identify and document the current status of these systems with a view to providing specifications for future reporting procedures.

Library

Target: Cataloguing and classification records are consistent with entries on ABN.

Target: Databases accurately reflect holding and locations of materials.

Target: New materials are catalogued, classified and available as soon as possible.

Target: To acquire new titles promptly.

Target: Committee meetings to be held bi monthly.

Target: A collection development is written and implemented.

Target: Current orders file records date of request of each item, date of receipt and date of payment.

Target: Outstanding items are followed up within 4 weeks of the order.

Target: Accounts paid within period specified by vendor.

Target: Copy of instruction manual to be available for consultation next to OPAC terminal.

Target: Training programs run for in house staff.

Target: To answer all inquiries promptly.

Target: Distribute library bulletins.

Target: To circulate journals to individuals as requested.

Target: To provide Selective Dissemination Information Service to match information profiles of individual staff members.

Target: To survey staff to measure satisfaction with the dissemination of legislative materials.

Target: To make available a manual describing all library functions.

Information and Technical Services Section

LA Office

The parties are committed to the introduction of the LA Office computer system.

Work practices and processes will be examined and changes made in anticipation of this new system. The parties are committed to working to achieve these changes.

Nothing can be claimed for productivity increases during the life of this Agreement due to the anticipated high cost of the implementation of LA Office.

The benefits will be measured at the end of the Agreement. If this measurement demonstrates that there have been productivity improvements over and above the cost of any inputs, those will be claimed in the next Agreement.

Terms and Conditions of Employment

The parties agree to reduce the number of occasions positions are backfilled due to Long Service Leave in order to meet the savings claimed in the Agreement.

(8) Measurement of Performance

(a) The principal objective of the initiatives is therefore to focus on employee effort on the annual targets contained in the business plans through the ongoing commitment to continuous improvement and the development of greater skills and knowledge of our people.

(b) The initiatives are an amalgam of quantitative and qualitative improvement initiatives and performance measures designed to achieve our business plans.

(9) Prior to the 2nd and 3rd salary payments the Director of Legal Aid and the Internal Audit Committee will review the overall performance of the organisation and assess the achievement of the performance targets set out in this Agreement.

(10) The Director of Legal Aid will also review the achievement of the qualitative initiatives as part of Legal Aid's ongoing strategic planning process.

(11) The Director of Legal Aid will then determine the percentage increase payable to staff in recognition of their contribution to the achievement of the initiatives set out in this Agreement. In the case of partial achievement of targets, a pro rata pay increase will apply.

(12) The assessment will then be referred to the SBU for consideration and a joint agreement made.

(13) In the event that the SBU are unable to reach agreement as to the pay increase to be awarded to staff, the matter will be referred to the WAIRC.

13—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the LAC to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of the LAC are achieved. The parties agree that performance indicators have

a primary role to assist in the attainment of corporate goals in the interests of the client group, the LAC and the government on behalf of the community.

(3) The performance indicators outlined in Clause 12—Productivity Improvement of the Agreement have been agreed to by the parties to be valid measures of progress in the performance of key elements of the Agreement.

(4) It is agreed that the employees' understanding of productivity measurement concepts are vital for performance monitoring agreements to be successful on a long term basis.

(5) The value of productivity improvements will be shared between Legal Aid, the Government and its employees.

14—DISPUTE SETTLEMENT PROCEDURES

(1) In the event of any question, dispute or difficulty between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply—

(a) The employee and the manager concerned shall attempt to resolve the matter in the first instance.

(b) If the matter is not resolved within five (5) working days, the matter shall be referred by the employee to the Human Resources Manager for resolution. The employee may be accompanied by a representative.

(c) If the matter is not resolved within five (5) working days, the matter shall be referred by the employee or his/her representative to the Director of Legal Aid for resolution.

(d) If the matter is not resolved within five (5) working days, the matter shall be referred by either party to the WAIRC for determination.

15—SALARY

(1) The following salary increases are payable on the basis of implementation and continued co-operation of those improvement in productivity and/or work practice changes outlined in Clause 12—Productivity Improvement.

(2) The following increases will be payable during the life of the Agreement:

(3) It is proposed that the salary increases to staff be paid in three stages throughout the life of the Agreement:

(a) A first increase of 4% payable from 1 January 1996. In addition a payment of $10 per week for staff (pro rata for part time employees) in the classification range level 1 to level 3.

(b) A second increase of 2% payable from the first pay period following 1 September 1996.

(c) A third increase of 2% payable from the first pay period following 1 August 1997.

(d) A bonus of $400 per full time employee (pro rata for part time employees) will be paid if the employees achieve 105% of all targets set. Part time employees bonus will be calculated according to the following formula:

$$\frac{\text{hours worked per fortnight}}{75} \quad X \quad \frac{\$400}{1}$$

(4) Payment of the second increase will be made having regard to—

(a) the continued commitment of the parties to the objectives of the Agreement;

(b) meeting of the following productivity targets as at 31 July 1996

1,464 inhouse assignments (3,766 assignments /18 months x 7 months)

$1,927,041 ACS costing figures ($4,955,250 /18 months x 7 months)

11,295 clients seen in duty lawyer services (29,046 clients /18 months x 7 months)

10,782 clients seen in legal advice bureau (27,727 clients / 18 months x 7 months)

1,069 clients given assistance through minor assistance (2,751 clients / 18 months x 7 months)

22,659 clients assisted through information and referral services (58,268 clients / 18 months x 7 months)

124 CLE programs conducted (320 CLE programs / 18 months x 7 months)

and satisfactory progress towards the qualitative targets.

(5) Payment of the third increase will be made having regard to—

(a) the continued commitment of the parties to the objectives of the agreement;

(b) meeting the productivity targets as at 30 June 1997.

(6) Subject to the parties having complied with all the requirements placed on them by the Agreement, employees will not be disadvantaged by State Government, Commonwealth Government and/or Commission decisions which impact directly on the productivity targets of this Agreement.

(7) The salary scales to be paid under the Enterprise Agreement are set out as follows—

level	salary payable 1/1/96	salary payable first pay after 1/9/96	salary payable first pay after 1/8/97
u17	11827	12064	12305
17	13735	14010	14290
18	15934	16253	16578
19	18363	18730	19105
20	20557	20968	21388
1.1	22531	22982	23441
1.2	23209	23673	24147
1.3	23886	24364	24851
1.4	24559	25050	25551
1.5	25236	25741	26256
1.6	25913	26431	26960
1.7	26692	27226	27770
1.8	27231	27776	28331
1.9	28028	28589	29160
2.1	28981	29561	30152
2.2	29712	30306	30912
2.3	30481	31091	31712
2.4	31293	31919	32557
2.5	32143	32786	33442
3.1	33311	33977	34657
3.2	34221	34905	35604
3.3	35159	35862	36579
3.4	36122	36844	37581
4.1	36923	37661	38415
4.2	37957	38716	39490
4.3	39022	39802	40598
5.1	41073	41894	42732
5.2	42460	43309	44175
5.3	43900	44778	45674
5.4	45394	46302	47228
6.1	47798	48754	49729
6.2	49432	50421	51429
6.3	51123	52145	53188
6.4	52928	53987	55066
7.1	55697	56811	57947
7.2	57612	58764	59940
7.3	59697	60891	62109
8.1	63084	64346	65633
8.2	65510	66820	68157
8.3	68519	69889	71287
9.1	72276	73722	75196
9.2	74815	76311	77838
9.3	77710	79264	80849
cl1	82089	83731	85405
cl2	86467	88196	89960
cl3	90844	92661	94514
cl4	95222	97126	99069

(8) The parties agree to consider flexible remuneration options as and when appropriate.

16—CONTRACT OF SERVICE

(1) This clause replaces Clause 7—Contract of Service in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Probation Period

(a) Every employee appointed to the LAC shall be on probation for a period not exceeding six months. However, employees appointed from the public sector and who have been employed on a fixed term contract who have at least six months' continuous satisfactory service immediately prior to their permanent appointment will not be required to serve a probationary period.

(b) Any time during the probation period the Director of Legal Aid may annul the appointment and terminate the services of the employee by the giving of one week's notice, in writing, by either party or payment in lieu thereof, by either party.

(c) As soon as possible following the expiry of the probation period the Director of Legal Aid shall—

(i) confirm the appointment; or

(ii) extend the period of probation for up to six months;

(iii) terminate the services of the employee.

(d) Where the Director of Legal Aid extends the probationary period of employment the contract of employment may be terminated as set out in paragraph (b) of this subclause.

(e) The Director of Legal Aid may summarily dismiss an employee deemed guilty of gross misconduct or neglect of duty and the employee shall not be entitled to any notice or payment in lieu of notice.

(3) Non-probationary Service

(a) No employee shall leave the employ of the Director of Legal Aid until the expiration of one month's written notice of the employee's intention to do so, without the approval of the Director of Legal Aid. An employee who fails to give the required notice may forfeit a sum of $500.00. Such monies may be withheld from monies due on termination.

(b) One month's written notice shall be given by the Director of Legal Aid to an employee whose services are no longer required. The Director of Legal Aid may pay the employee one month's salary in lieu of notice.

(c) The Director of Legal Aid may summarily dismiss an employee deemed guilty of gross misconduct or neglect of duty and the employee shall not be entitled to any notice or payment in lieu of notice.

(d) An employee, having attained the age of 55 years shall be entitled to retire from the LAC.

(4) Part Time Employment

A part time employee shall be entitled to the same salary, leave and other conditions prescribed in this Agreement for full time employees, with payment for paid leave being in the proportion to which the employee's weekly hours bear to the weekly hours of an employee engaged full time in that class of work.

(5) Fixed Term Employment

(a) The Director of Legal Aid may employ employee for a fixed term.

(b) Employees appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment and the notice provisions.

(6) Articled Clerks/Restricted Year Practitioners

Articled Clerks are employed, subject to the Legal Practitioners Act 1893, for the period of the Articled Clerkship and Restricted Year. Thereafter, if they wish to remain at the LAC they must make application for an advertised vacancy and be the successful applicant.

(7) Casual Employment

(a) A casual employee shall be paid according to the terms and conditions of Clause 15—Salary of this Agreement.

(b) A casual employee shall receive a loading of 20% in lieu of any paid leave entitlements.

(c) Conditions of employment and/or allowances provided for employees under this Agreement shall not apply to casual employees. However, where expenses are directly and necessarily incurred by a casual employee in the ordinary performance of their duties, they shall be entitled to reimbursement in accordance with the provisions of this Agreement.

(d) The employment of a casual employee may be terminated at any time by the casual employee or the Director of Legal Aid giving to the other, one hour's prior notice. In the event the Director of Legal Aid or casual employee fails to give the require notice, one hour's salary shall be paid or forfeited.

17—PART TIME EMPLOYMENT

(1) This clause replaces Clause 9—Part Time Employment in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Each permanent part time arrangement shall be confirmed by the Director of Legal Aid in writing and should include the following specifications—

(a) the agreed period of the arrangement; and

(b) the hours to be worked daily and weekly by the employee, including starting and finishing times, which shall be referred to as "ordinary working hours".

(3) The Director of Legal Aid shall give an employee one (1) month's notice of any proposed variation to that employee's working hours, provided that the Director of Legal Aid shall not vary the employee's total weekly hours of duty without the employee's prior written consent.

(4) Whenever an agreement in writing is reached for a temporary variation to an employee's ordinary working hours, the following shall apply—

(a) time worked up to 7.5 hours on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.

(b) additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate of pay.

(5) The provisions of Clause 50—Overtime of the Agreement shall not apply to all time worked outside the ordinary working hours prescribed by subclause (3) unless an arrangement in accordance with subclause (4) of this clause is in place. However, if an employee is not entitled to flexi time, the hours worked exceeding 7.5 hours on any day and the time worked over 7.5 hours will be classified as overtime as outlined in Clause 50—Overtime.

(6) Salary

(a) An employee who is employed on a part time basis shall be paid a proportion of the appropriate full time salary dependent upon time worked. The salary shall be calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{\text{Full time fortnightly salary}}{1}$$

(b) An employee shall be entitled to annual increments as prescribed in Clause 20—Annual Increments of the Agreement.

(7) Employees are entitled to the holidays prescribed in Clause 38—Public Holidays without variation of the employee's fortnightly salary provided the holidays occur on a day which is normally worked.

(8) Employees are entitled to the days in lieu as prescribed in Clause 39—Public Service Holidays without variation of the employee's fortnightly salary provided that they normally would have worked that day.

(9) Annual Leave

(a) An employee shall be granted annual leave in accordance with Clause 25—Annual Leave of this Agreement. Payment to an employee proceeding on annual leave shall be calculated having regard for any variations to the employee's ordinary working hours during the accrual period.

(b) Employees are entitled to travel concessions in accordance with subclause (2) of Clause 40 Remote Allowances on a pro rata basis according to the usual number hours worked per week.

(c) Travelling time shall be calculated on a pro rata basis according to the number of hours normally worked.

(10) Credits provided in Clause 27—Sick Leave shall accrue to the employee provided that where an employee is employed for less than 75 hours per fortnight, the credits shall be pro rated according to the number of hours worked each fortnight.

(11) An employee shall proceed on long service leave for 13 weeks after seven years' part time service. Payment made for long service leave granted to an officer in respect of such part time provision shall be adjusted according to the hours worked by the employee during that part time service, subject to the following—

(a) If an employee consistently worked on a part time basis for a regular number of hours during the whole of the employee's qualifying service, the employee shall continue to be paid the salary determined on that basis during the long service leave.

(b) If an officer has worked a varying number of weekly hours during the period of qualifying service, the payment for long service leave granted in respect of part time service is calculated on a salary which bears to the full time salary of the position occupied by the officer when taking leave the same proportion that the hours worked when employed part time bears to the normal weekly hours of a full time employee.

(12) Subject to Clause 37—Trade Union Training Leave and Clause 32 Defence Force Reserves Leave, of this Agreement, part time employees shall receive the same entitlement as full time employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

(13) Subject to Clause 28—Short Leave, of this Agreement, part time employees are eligible for short leave on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \quad X \quad \frac{22.5 \text{ hours}}{1}$$

(14) Subject to Clause 31—Study Leave, of this Agreement, part time employees are entitled to pro rata study leave in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \quad X \quad \frac{5 \text{ hours}}{1}$$

(15) Subject to Clause 24—Parental Leave, of this Agreement, part time employees are entitled to parental leave.

(16) Subject to Clause 23—Special Family Leave, of this Agreement, part time employees are entitled to special family on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \quad X \quad \frac{37.5 \text{ hours}}{1}$$

(17) Subject to Clause 29—Bereavement Leave, of this Agreement, part time employees are entitled to bereavement leave on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \quad X \quad \frac{37.5 \text{ hours}}{1}$$

(18) Higher Duties Allowance

(a) A part time employee who is directed to act in an office which is classified higher than the employee's substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five working days or more, shall be entitled to payment of a Higher Duties Allowance according to Clause 41 of this Agreement.

(b) For the purpose of part time employment—

(i) "five consecutive working days" is to be interpreted as five days worked in the higher office. For example, if the part time higher office involves work Monday, Wednesday and Friday each week, the employee must then work in that higher office for Monday and Wednesday and Friday and the subsequent Monday and Wednesday in order to qualify for the allowance; and

(ii) a "week" shall mean the normal working week in the higher office.

(19) Where a full time employee is permitted, at their initiative, to work part time for a specified period no greater than 6 months, that employee has a right, upon written application to revert to full time hours in that position, or a position of equal classification, as soon as is deemed practicable by the Director of Legal Aid, but no later than the expiry of the agreed period.

(20) A full time employee who is permitted at their initiative to work part time for an unspecified period may apply to revert to full time hours by making application for an advertised vacancy.

18—HOURS OF DUTY

(1) This clause replace Clause 16—Hours in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) The ordinary working hours, exclusive of meal intervals shall not exceed thirty seven and half in any week. Such hours shall be worked on Monday to Friday between the hours of 7.00 am and 7.00 pm, as determined by the Director of Legal Aid, provided that not more than 10 hours worked in any one day.

(3) Each meal interval shall be taken between the hours of 11.30 am and 2.30 pm for full time staff and shall be at least thirty minutes in duration.

(4) Flexi time

(a) The ordinary hours of work may be arranged to allow the employee to work flexi time subject to operational requirements.

(b) In accordance with subclause (2) of this clause employees may select their own starting and finishing times within the following periods—

7.00 am to 9.30 am

11.30 am to 2.30 pm

3.30 pm to 7.00 pm

(c) Employees must work in the following periods, to be known for the purposes of this subclause, as core periods—

9.30 am to 11.30 am

2.30 pm to 3.30 pm

(d) An employee shall be allowed a meal break between 11.30 am to 2.30 pm of at least 30 minutes.

(e) An employee may be allowed a maximum of two full days or any combination of half days and full days that does not exceed two days in any one settlement period.

(f) Flexi leave may be taken before the time has accrued.

(g) For the purpose of this subclause a settlement period shall—

(i) consist of four weeks;

(ii) commence at the beginning of a pay period;

(iii) have the required hours of duty of 150 hours.

(h) Credit Hours

(i) Credit hours of a maximum of 10 hours shall be allowed at the end of each settlement period and shall be carried forward to the next settlement period.

(ii) In the case of credit hours greater than 10 hours gained in one settlement period, the hours in excess of 10 hours shall be lost.

(i) Debit Hours

(i) Debit hours below the required 150 hours to a maximum of four hours shall be allowed at the end of each settlement period and shall be carried forward to the next settlement period.

(ii) For debit hours in excess of four hours, employees shall be required to take leave with-

out pay for the period necessary to reduce the debit hours to four hours.

(j) A maximum of ten hours may be worked in any one day.

(5) Alternative employment arrangements may be considered by the Director of Legal Aid.

19—SHIFT WORK

(1) This clause replaces Clause 17—Shift Work in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Ordinary hours may be worked by way of shifts outside those specified in Clause 18—Hours of Duty where, pursuant to an agreement between the Director of Legal Aid and union, it is permitted.

20—ANNUAL INCREMENTS

(1) This clause replace Clause 12—Annual Increments in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Subject to good conduct, diligence and efficiency, an employee shall proceed to the maximum of the employee's salary range by annual increments according to the increments of such salary range.

(3) Before any increase in salary is paid to an employee who occupies a position which is allocated a range of salary, the Director of Legal Aid must be satisfied in respect of the employee's efficiency, diligence and conduct and where the Director of Legal Aid is satisfied with the assessment, the increase in salary shall be paid.

(4) Where the employee is the subject of an adverse assessment according to subclause (3) of this clause the following provisions shall apply—

(a) the assessment shall be put in writing and brought to the notice of the employee and shall be initiated by the Director of Legal Aid;

(b) if the employee desires to give any explanation in respect of the assessment or give any reasons for disagreeing with the assessment, the employee shall put the explanation or reasons in writing;

(c) the Director of Legal Aid shall consider the assessment and the employee's explanation or reasons;

(d) the Director of Legal Aid shall notify the employee of the decision within 28 clear days of receipt of the assessment.

(5) Where an increase is not paid for a specific period, the Director of Legal Aid shall complete a further assessment before the expiry of that specific period and the provisions of subclause (3) or (4) shall apply in respect of that assessment.

(6) The non-payment of an increase shall not change the normal anniversary date of any further increase due to the employee.

(7) For the purpose of this clause "continuous service", except where an increment is payable according to age, shall not include—

(a) any period exceeding 14 calendar days during which an employee is absent on leave without pay. In the case of leave without pay which exceeds 14 calendar days the entire period of such leave without pay is excised in full;

(b) any period which exceeds six months in one continuous period during which an employee is absent on workers' compensation. Provided that only that portion of such continuous absence which exceeds six months shall not count as "continuous service";

(c) any period which exceeds three months in one continuous period during which an employee is absent on sick leave without pay. Provided that only that portion of such continuous absence which exceeds three months shall not count as "continuous service".

21—CERTIFICATE OF SERVICE

(1) This clause replaces Clause 8—Certificate of Service in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) On the written request of an employee and prior to the employee's termination of service the Director of Legal Aid shall provide a Certificate of Service containing full information as to the period of service and the nature of the duties performed by the employee.

22— CEREMONIAL/CULTURAL LEAVE

(1) An employee who is legitimately required to be absent from work for tribal/ceremonial/cultural purposes shall be entitled to take accrued annual leave or leave without pay.

(2) Ceremonial/cultural leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities.

(3) Ceremonial/cultural leave shall not be limited to Aboriginals and Torres Strait Islanders.

23—SPECIAL FAMILY LEAVE

(1) An employee may use a total of 37.5 hours of his/her accrued sick leave, each year, to supervise the convalescence of a family member. The year is to commence from when the sick leave is credited to the employee.

(2) An application for special family leave exceeding two consecutive working days (15 hours) shall be supported by a certificate of a registered medical practitioner.

(3) For this clause "family member" means the employee's spouse, de facto spouse, child, step child, parent, step parent, or another person who lives with the employee as a member of the employee's family.

(4) Part time employees are eligible for special family leave in accordance with this clause, on a pro rata basis calculated in accordance with the following formula:

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{37.5 \text{ hours}}{1}$$

24—PARENTAL LEAVE

(1) This clause replaces Clause 23—Maternity Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Definition

(a) "Employee" includes full time, part time, permanent and fixed term contract employees.

(b) "Replacement Employee" is an employee employed specifically to replace an employee proceeding on parental leave.

(3) Eligibility for Parental Leave

(a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner up to the time the child reaches the age of two years.

(b) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

(c) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examinations required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day of unpaid leave. The employee may take any paid leave entitlement in lieu of this leave.

(d) Where both partners are employed by the Director of Legal Aid, parental leave shall not be taken concurrently except under special circumstances and with the approval of the Director of Legal Aid.

(e) An employee on parental leave is not entitled to receive a salary.

(f) The provisions of this clause do not apply to casual employees.

(4) Other leave entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee on parental leave is not entitled to be paid sick leave or other paid award absences. For example, public holidays and the public service holidays.

(c) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to a period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(d) Where a pregnant employee, not on parental leave, suffers an illness related to the pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled, up to six weeks prior to the expected birth of the child, or unpaid leave for a period certified as necessary by a registered medical practitioner.

(5) Notice and Variation

(a) The employee shall give four weeks notice in writing to the Director of Legal Aid of the date the employee proposes to commence parental leave, stating the period of parental leave to be taken. The application shall be supported by a certificate of a registered medical practitioner indicating the expected date of birth.

(b) The Director of Legal Aid may grant the employee up to 52 weeks parental leave. In the case of the pregnant employee, the minimum period in which they can be absent on parental leave shall be six weeks before the expected date of birth of the child and end six weeks after the day on which the birth has taken place. If an employee wishes to vary these times, a medical certificate must be produced from a registered medical practitioner stating that the employee is fit to work.

(c) An employee may elect to take a period of parental leave less than 52 weeks and may at any time during that period of leave apply to reduce or extend the period stated in the original application.

(d) A pregnant employee who has not applied for parental leave in accordance with the provisions of this clause shall (unless express approval of the Director of Legal Aid has been given for continued employment), be deemed to have resigned six weeks before the date of birth of the child.

(6) Replacement Employee

(a) Prior to engaging a replacement employee the Director of Legal Aid shall inform the replacement employee of the temporary nature of the employment and the entitlements relating to the return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall inform the Director of Legal Aid, in writing, of their intention to return to work not less than four weeks prior to the expiration of the parental leave.

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave or an equivalent position.

(c) An employee may apply to return on a part time basis to the same position or equivalent position in accordance with the part time provisions of this Agreement.

(d) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed on a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental 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 under the Agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during period of leave by giving four weeks notice in writing.

25—ANNUAL LEAVE

(1) This clause replaces Clause 19—Annual Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Definitions—

(a) Accrued annual leave is the annual leave an employee is entitled to from a previous calendar year.

(b) Pro-rata annual leave is the proportion of leave that an employee is entitled to in the current year, either from the date of commencement or to the date of cessation.

(3) Entitlement

(a) Each employee is entitled to 150 hours paid annual leave for each year of service. Annual leave is calculated on a calendar year basis commencing on January 1 in each year.

(b) Pro-rata annual leave shall be credited to an employee.

(c) The provisions of this clause do not apply to casual employees.

(4) Pro-rata annual leave

(a) When calculating the annual leave entitlement, under this clause, no deduction shall be made from the annual leave in respect of the period the employee is on annual leave, observing a public holiday prescribed under this Agreement, absence through sickness with or without pay. If an employee is absent on sick leave with no pay in excess of three months, absent on workers' compensation in excess of six months and absent on leave without pay in excess of two weeks then this period does not count when calculating the annual leave entitlement.

(b) An employee may take annual leave during the calendar year in which it accrues or anytime thereafter but the time during which the leave may be taken is subject to approval.

(c) An employee who has been permitted to take annual leave and who ceases duty before completing the required continuous service to accrue the annual leave, must refund the value of the unearned pro-rata portion. This is calculated at the rate of salary as at the date the leave was taken but no refund is required in the event of the death of an employee.

(5) Part time entitlement

A part time employee shall be granted annual leave in accordance with this clause, however, payment of annual leave shall be calculated in accordance with the following formula:

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{150 \text{ hours}}{1}$$

(6) Portability

Where an employee, immediately prior to being employed by the Director of Legal Aid, was employed in the Public Sector, the Director of Legal Aid shall approve the portability of accrued and pro rata annual leave entitlements held at the date the employee ceased the previous employment, provided that—

(a) the employee's employment with the Director of Legal Aid commenced no later than one week after ceasing the previous employment; and

(b) the employee was not paid out all or part of the accrued and pro rata annual leave entitlements held at the time of ceasing the previous employment.

(7) Cessation

(a) An employee who resigns, retires, is retired or dies shall be paid all accrued annual leave in accordance with this clause. This shall apply to an employee who is dismissed unless the misconduct for which the employee has been dismissed occurred prior to the completion of the qualifying period.

(b) Pro-rata annual leave shall be paid to an employee who resigns, retires, is retired or in respect of an employee who dies but not to an employee who is dismissed.

(8) The Director of Legal Aid may direct an employee to take accrued annual leave and may determine the date on which such leave shall commence.

(9) Leave Loading

(a) A loading equivalent to 17.5% of normal salary is payable to employees proceeding on annual leave, including accumulated annual leave.

(b) The maximum payment for leave loading shall not exceed the average weekly total earnings of all males in Western Australia, as published by the Australia Bureau of Statistics, for the September quarter of the year immediately preceding in which the leave loading will be payable.

(c) Annual leave commencing in any year and extending without a break into the following year attracts a loading calculated on the salary applicable on the day the leave commenced. The maximum loading payable shall be that applicable on the day the leave is commenced.

(d) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an employee can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.

(e) A pro rata loading is payable on periods of approved annual leave less than four weeks.

(f) The leave loading is calculated on the rate of salary at the time of payment under Clause 15—Salary of this Agreement, where applicable, the salary shall include the following allowances—

(i) district allowance

(ii) personal allowance

(g) Where payment in lieu of accrued or pro rata annual leave is made on the death, dismissal, resignation or retirement of an employee, a loading calculated in accordance with the terms of this clause is to be paid. Provided that no loading shall be payable in respect of pro rata annual leave paid on resignation or where an employee is dismissed for misconduct.

(h) Part time employees shall be paid a pro rata loading at the salary rate applicable.

(i) Leave loading is not payable on the termination of an employee.

(j) An employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion. Provided that no refund shall be necessary in the event of the death of an employee.

26—LONG SERVICE LEAVE

(1) This clause replaces Clause 21—Long Service Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) The provisions of this clause do not apply to casual employees.

(3) Each employee who has completed a period of seven years of continuous service shall be entitled to—

(a) 13 weeks (487.5 hours) of long service leave on full pay, or

(b) 26 weeks of long service leave on half pay, or

(c) 6.5 weeks of long service leave on double pay.

subject to the LAC's operations.

(4) Long service leave may be taken in multiples of one day duration.

(5) Each employee is entitled to an additional 13 weeks of long service leave on full pay, or 26 weeks of long service leave on half pay or 6.5 weeks long service leave on double pay for each subsequent period of seven years of continuous service completed.

(6) A part time employee shall have the same entitlement to long service leave as full time employees, however, payment made during such periods of long service leave shall be adjusted according to the hours worked by the employee during the accrual period.

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{487.5 \text{ hours}}{1}$$

(7) For the purpose of determining an employee's long service leave entitlement, the expression "continuous service" includes any period during which the employee is absent on full pay or part pay from duties in the public sector, but does not include—

(a) any period exceeding two weeks during which the officer is absent on leave without pay or parental leave, except where leave without pay is approved for the purpose of fulfilling an obligation by the Government of Western Australia to provide staff for a particular assignment external to the public sector of Western Australia.

(b) any period during which an employee is taking long service leave entitlement or any portion thereof except in the case of portability of long service when the period excised will equate to a full entitlement of 13 weeks.

(c) any service by an employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service has actually entitled the employee to the long service leave under this clause.

(d) any period of service that was taken into account in ascertaining the amount of a lump sum payment in lieu of long service leave.

(e) any period of service between the third anniversary date of the officer having accrued an entitlement to long service leave, or a deferred commencing date approved by the Director of Legal Aid and the date on which the officer clears that entitlement.

(8) Any public holiday or public service holiday occurring during an employee's absence on long service leave shall be deemed to be a portion of the long service leave and extra days in lieu thereof shall not be granted.

(9) The Director of Legal Aid may direct an employee to take accrued long service leave and may determine the date on which such leave shall commence. Should the employee not comply with the direction, disciplinary action may be taken against the employee.

(10) An employee who has elected to retire at or over the age of 55 years and who will have completed more than 12 months continuous service before the date of retirement may make an application to the Director of Legal Aid to take pro rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by this clause for a long service leave entitlement.

(11) Deferment of Long Service Leave

(a) Long service leave shall be taken within three years of it becoming due, at the convenience of the Director of Legal Aid. Provided that the Director of Legal Aid may approve the deferment of long service leave in exceptional circumstances. Exceptional circumstances shall include retirement within five years of the date of entitlement.

(b) Approval to defer the taking of long service leave may be withdrawn or varied at any time by the Director of Legal Aid giving the officer notice in writing of the withdrawal or variation.

(12) A lump sum payment of the money equivalent of any—

(a) long service leave accrued shall be made to an employee who resigns, retires, is retired or is dismissed or in respect to an employee who dies.

(b) pro rata long service leave based on continuous service of a lesser period than seven years for a long service leave entitlement shall be made—

(i) to an employee who retires at or over the age of 55 years or who is retired on the grounds of ill health, if the employee has completed more than 12 months continuous service before the date of retirement;

(ii) to an employee who, not having resigned, is retired by the Director of Legal Aid for any other cause, if the employee has completed more than three years' continuous service before the date of retirement; or

(iii) in respect of an employee who dies, if the employee has completed more than 12 months' continuous service.

(13) The calculation of the amount of money due for long service accrued and for pro rata long service leave shall be made at the rate of salary of an employee at the date of retirement or resignation or death.

(14) Portability

(a) Where an employee, immediately prior to being employed by the Director of Legal Aid , was employed in the Public Sector, the Director of Legal Aid shall approve the portability of pro rata long service leave entitlements held at the date the employee ceased the previous employment, provided that—

(i) the employee's employment with the Director of Legal Aid commenced no later than one week after ceasing the previous employment; and

(ii) the pro rata long service leave entitlement shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service, any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and

(iii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment to the LAC in accordance with the provisions of this clause.

(15) Compaction of long service leave

(a) An employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the employee's ordinary working hours at the time of commencement of long service leave, may elect to take a lesser period of long service leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of long service leave.

(b) An employee who has elected to compact an accrued entitlement to long service leave shall only take such leave in any period on full pay and the period excised as "continuous service" shall be 13 weeks.

(16) An employee who, at the time of taking long service leave, is employed on a part time basis who during the accrual period worked a combination of full and part time hours will be paid a combination of the full and part time salary (at the time of taking the long service leave) so that the total amount of long service leave taken shall be 13 weeks.

27—SICK LEAVE

(1) This clause replaces Clause 22—Sick Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Sick leave provisions do not apply to casual employees.

(3) For the purpose of this clause "service" shall not include—

(a) any period exceeding 14 calendar days during which an employee is absent on leave without pay. In this case the entire period of leave is excised in full;

(b) any period which exceeds six months in one continuous period during which an employee is absent on workers' compensation. In this case, the portion of continuous absence which exceeds six months shall not count as "service";

(c) any period which exceeds three months in one continuous period during which an employee is absent on sick leave without pay. In this case, the portion of continuous absence which exceeds three months shall not count as "service".

(4) Entitlement

(a) The Director of Legal Aid shall credit each officer which the following sick leave credits, which shall be cumulative—

	Sick Leave on full pay
On the day of initial appointment	45 hours
On completion of 6 months continuous service from date of appointment	48 hours and 45 minutes
On completion of 12 months continuous service from date of appointment	93 hours and 45 minutes
On completion of each further period of 12 months continuous service.	93 hours and 45 minutes

(b) In the event of an employee being on sick leave for a continuous period of 8 weeks, the employee may apply to the Director of Legal Aid for the balance of the sick leave entitlement to be on half pay.

(c) A part time employee shall be entitled to the same sick leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the employee not been on sick leave.

(5) Medical Certificate

(a) An application of sick leave exceeding two consecutive working days (15 hours) shall be supported by the certificate of a registered medical practitioner.

(b) The amount of sick leave granted without the production of the certificate required in paragraph (a) of this subclause shall not exceed, in aggregate 37.5 hours in any one credit year.

(6) Where the Director of Legal Aid has occasion for doubt as to the cause of the illness or the reason for absence, the Director of Legal Aid may arrange for the registered medical practitioner to visit and examine the employee, or may direct the employee to attend the medical practitioner for examination. If the report of the medical practitioner does not confirm that the employee is ill, or if the employee is not available for the examination at the time of the visit of the medical practitioner, or fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination appointment visit shall be paid by the employee.

(7) If the Director of Legal Aid has reason to believe that an officer is in such a state of health as to render the employee unfit to perform his/her duties or a danger to fellow employees or the public, the employee may be required to obtain and provide a report as to his/her condition from a registered medical practitioner. The fee for any such examination shall be paid by the LAC.

(8) Upon receipt of the medical report, in relation to sub clause (6), the Director of Legal Aid may direct the employee to be absent from duty for a specified period or, if already on leave of absence, direct the employee to continue on leave for a specified period. Such leave shall be regarded as sick leave.

(9) Upon report by a registered medical practitioner that, by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by

Commonwealth or State law in respect of that disease, an employee is unable to attend for duty, the employee concerned may be granted sick leave or, at the option of the employee, the whole or any portion of the leave may be deducted from accrued annual leave or long service leave.

(10) Leave granted under sub clause (8) shall not be granted for any period beyond the earliest date at which it would be practicable for the employee to resume duty, having regard to the restrictions imposed by law.

(11) Where an employee is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Director of Legal Aid that as a result of the illness the employee was confined to his/her place or residence or a hospital for a period of at least five consecutive working days, the Director of Legal Aid may grant sick leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

(12) Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Director of Legal Aid that as a result of illness the employee was confined to his/her place or residence or a hospital for a period of at least five consecutive working days, the Director of Legal Aid may grant sick leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

(13) An employee who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

(14) No sick leave shall be granted with pay, if the illness has been caused by the misconduct of the employee, or in any case of absence from duty without sufficient cause.

(15) An employee, who has resigned, and is subsequently reappointed, the employee shall for the purposes of this clause be regarded as a new appointee as from the date of appointment.

(16) Where an employee has been retired on medical grounds resumes duty, sick leave credits at the date of retirement shall be reinstated.

(17) Workers' Compensation

(a) Where an employee suffers from a disability within the meaning of Section 5 of the Workers' Compensation and Rehabilitation Assistance Act, 1981 which necessitates that employee being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with section 80(2) of the Workers' Compensation Rehabilitation Assistance Act, 1981 where the claim for workers' compensation is decided in favour of the employee, the sick leave credit is to be reinstated and the period of absence shall be granted as sick leave without pay.

(18) War Caused Illness

(a) An employee who produces a certificate from the Department of Veterans' Affairs stating that the employee suffers from a war caused illness, may be granted special sick leave credits of 112 hours 30 minutes per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 337 hours 30 minutes and shall be recorded separately to the employees normal sick leave credit.

(b) Every application for sick leave for war caused illness shall be supported by a certificate from a registered medical practitioner as to the nature of the illness.

(19) Portability

(a) Where an employee, immediately prior to being employed by the Director of Legal Aid , was employed in the Public Sector, the Director of Legal Aid shall approve the portability of sick leave entitlements held at the date the employee ceased the previous employment, provided that the employee's employment with the Director of Legal Aid commenced no later than one week after ceasing the previous employment.

28—SHORT LEAVE

(1) This clause replaces Clause 26—Short leave in the Government Officers Allowances and Conditions Award (1989).

(2) Short leave provisions do not apply to casual employees.

(3) Short leave is defined as matters of compassionate and pressing nature which arise without notice and require immediate attention. Examples of such matters are the illness or bereavement of a close relative or serious storm damage to an employees residence. It shall not be granted for sick leave purposes.

(4) The Director of Legal Aid may, upon sufficient cause being shown, grant an employee short leave on full pay not exceeding 15 consecutive working hours, but any leave granted under the provisions of this clause shall not exceed, in aggregate, 22.5 hours in any one calendar year. That is, from 1 January to 31 December each year.

(5) Short leave days are not cumulative.

(6) Part time employees are eligible for short leave in accordance with this clause, on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{22.5 \text{ hours}}{1}$$

(7) An employee employed on a fixed term contract of less than 12 months shall be eligible for pro rata short leave in accordance with this clause.

29—BEREAVEMENT LEAVE

(1) An employee is entitled to five days (37.5 hours) bereavement leave on the death of —

(a) spouse or defacto spouse

(b) child or step child.

(2) Part time employees are eligible for bereavement leave in accordance with subclause (1) of this clause, on a pro rata basis calculated in accordance with the following formula:

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{37.5 \text{ hours}}{1}$$

(3) An employee is entitled to two days bereavement leave on the death of a parent or step parent or any other person, who, immediately before that person's death, lived with the employee as member of the employee's family.

(4) The bereavement leave days need not be consecutive.

(5) Bereavement leave is not to be taken whilst on any form of leave without pay.

30—LEAVE WITHOUT PAY

(1) This clause replaces Clause 24—Leave without pay in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) The Director of Legal Aid may grant an employee leave without pay for any period.

(3) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met—

(a) the work of the LAC is not inconvenienced; and

(b) all other leave credits of the employee are exhausted.

(4) An employee on a fixed term contract may not be granted leave without pay for any period beyond that employee's period of employment.

(5) The Director of Legal Aid may grant an employee leave without pay to undertake full time study, subject to a yearly review of satisfactory performance. Unless the Director of Legal Aid otherwise determines any leave granted under this sub clause shall not count as qualifying service for leave purposes.

(6) Leave without pay for Australian Institute of Sport Scholarships—

(a) The Director of Legal Aid may grant an employee who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay.

(b) Leave without pay for this purpose shall count as qualifying service for all purposes except annual leave.

31—STUDY LEAVE

(1) This clause replaces Clause 25—Study Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Conditions for Granting Time Off—

(a) An employee may be granted time off for part time study purposes at the discretion of the Director of Legal Aid.

(b) Part time employees are entitled to study leave on a pro rata basis based on the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{5 \text{ hours}}{1}$$

(c) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken, in remote locations lacking the required educations facilities.

(d) Employees shall be granted sufficient time off with pay to travel to, and sit for the examinations of any approved course of study.

(e) In every case the approval of time off to attend lectures and tutorials will be subject to—

(i) LAC convenience;

(ii) the course being undertaken on a part time basis;

(iii) employees undertaking an acceptable formal study load, of at least equal, to the study leave granted, in their own time.

(iv) employees making satisfactory progress with their studies, and

(v) the course being relevant to the employee's career at the LAC, public sector and being of value to the State.

(3) Payment of Fees

(a) LAC is to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment, are required to undertake studies at a University or College of Advanced Education. Employees who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.

(b) This assistance does not include the cost of text books or guild or society fees.

(c) An employee who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

(4) Approved Courses

(a) Degree course at the University of Western Australia, Murdoch University, Curtin University of Technology and Edith Cowan University.

(b) Degree or associate diploma courses at a College of Advanced Education.

(c) Diploma courses at Technical and Further Education (TAFE).

(d) Two year full time certificate courses at TAFE.

(e) Courses recognised by the National Authority of the Accreditation of Translators and Interpreters (NAATI) in a language relevant to the needs of the public sector.

(5) Study Time

(a) An acceptable part time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the employee's own time, except in special cases such as where the employee is in the final year of study and requires less time to complete the course, or the employee is undertaking the recommended part time year or stage and this does not entail five hours formal study.

(b) In cases where employees are studying subjects which require fortnightly classes the weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.

(c) Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the employee's normal place of work.

(d) Unless the Director of Legal Aid otherwise approves, employees shall not be granted more than five hours per week off with pay.

(e) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.

(6) The Director of Legal Aid may grant an officer full time study leave with pay to undertake—

(a) post graduate degree studies at Australian or overseas tertiary education institutions; or

(b) study tours involving observations and/or investigations; or

(c) a combination of post graduate studies and study tour.

(7) Applications for full time study leave with pay are to be considered on their merits and be granted provided that the following conditions are met—

(a) the course or a similar course is not available locally.

(b) it must be a highly specialised course with direct relevance to the employee's profession.

(c) it must be highly relevant to the LAC's corporate strategies and goals.

(d) the expertise and specialisation offered by the course of study should not already be available through other employees at the LAC.

(e) if the applicant was previously granted study leave, studies must have been successfully completed at that time.

(8) Full time study leave with pay may be approved for more than 12 months subject to a yearly review of satisfactory performance.

(9) Where an outside award is granted and the studies to be undertaken are considered highly desirable by the LAC, financial assistance to the extent of the difference between the employee's normal salary and the value of the award may be considered. Where no outside award is granted and where a request meets all the necessary criteria the part or full payment of salary may be approved at the discretion of the Director of Legal Aid.

(10) The period of full time study leave with pay is accepted as qualifying service for leave entitlements as prescribed under this Agreement.

32—DEFENCE FORCE RESERVES LEAVE

(1) This clause replaces Clause 29—Leave for Training with the Defence Force Reserves in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) This clause does not apply to casual employees.

(3) Subject to the LAC's convenience, leave of absence may be granted by the Director of Legal Aid to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction under the conditions contained in this clause.

(4) Attendance at a Camp for Annual Obligatory Training

(a) In order to attend a camp for annual continuous obligatory training, an employee may be granted one period of leave not exceeding 75 hours on full pay in any period of 12 months commencing on and from January 1 each year.

(b) If the Officer-in-Charge of a unit certifies that it is essential for an employee to be at the camp in an advance or rear party, a maximum of 30 hours on full pay may be granted in a 12 month period.

(5) Attendance at one special school, class or course of instructions

(a) in addition to the leave granted under subclause (4), a period not to exceed 16 calendar days in any period of 12 months commencing on and from January 1, in each year, may be granted provided that the Director of Legal Aid must be satisfied that the leave required is for a special purpose and not for a further routine camp;

(b) this leave may, at the option of the employee, be granted from annual recreation leave due;

(c) if the leave is not taken from accrued annual leave, salary during the period shall be at the rate of difference between the normal remuneration of the employee and the defence force payment to which the employee is entitled if this does not exceed the normal pay from the LAC. In calculating the pay differential, pay for Saturdays, Sundays, public holidays and special rostered days off is to be excluded and no account is to be taken of the value of any board or lodging provided for the employee;

(d) leave without pay shall be granted if the defence force payments exceed the normal pay of the employee.

(6) Application for leave and payment of leave

(a) Applications for leave of absence for the above reasons shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted the employee shall provide a certificate of attendance to the Director of Legal Aid. Where leave of absence has been granted with pay at the rate of difference between normal remuneration and defence force payment, the employee shall also provide a detailed certificate of the defence force payment received.

(b) On written application, an employee shall be paid salary in advance.

(c) Where annual leave is not utilised for attendance at a special school or course the period shall be treated as leave without pay and then adjusted for the pay differential when the certificate of attendance and payment is received.

(d) Part time employees shall receive the same entitlement as full time employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

33—WITNESS SERVICE LEAVE

(1) An employee subpoenaed or called as a witness to give evidence in any proceedings shall as soon as practicable notify the manager/supervisor.

(2) Where an employee is subpoenaed or called as a witness to give evidence in an official capacity, the employee shall be granted leave of absence with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness.

(3) If the employee is on any form of paid leave, and is subpoenaed or called as a witness in an official capacity, the leave involved in being a witness will be reinstated, subject to the satisfaction of the Director of Legal Aid.

(4) The employee is not entitled to retain any witness fees but shall pay all fees received into the Consolidated Revenue Fund. The receipt of such payment, with a voucher showing the amount of fees received, shall be forwarded to the Director of Legal Aid.

(5) Where an employee is subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees for travelling expenses as soon as practicable after the default, notify the Director of Legal Aid.

(6) Where an employee is subpoenaed or called as a witness on behalf of the Crown, not in an official capacity, shall be granted leave of absence with pay.

(7) If the employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the employee's civic duty.

(8) The employee is not entitled to retain any witness fees but shall pay all fees received into the Consolidated Revenue Fund.

(9) An employee subpoenaed or called as a witness under any circumstances other than specified in subclause (2) and (3) of this clause shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with this Agreement.

34—JURY SERVICE LEAVE

(1) An employee required to serve on a jury shall, as soon as practicable, after being summoned to serve, notify the manager/supervisor.

(2) An employee required to serve on a jury shall be granted leave of absence on full pay, but only for such period as is required to enable the employee to carry out duties as a juror.

(3) If the employee is on any form of paid leave, this leave shall not be reinstated as such jury service is deemed to part of the employee's civic duty.

35—LEAVE FOR INTERNATIONAL SPORTING EVENTS

(1) Leave with pay may be granted by the Director of Legal Aid to an employee chosen to represent Australia as a competitor or official, in a sporting event which meets the following criteria—

(a) it is a recognised international amateur sport of national significance; or

(b) it is a world or international regional competition; and

(c) no contribution is made by the sporting organisation towards the normal salary of the employee.

(2) The Director of Legal Aid shall make enquires with the Ministry of Sport and Recreation as to whether—

(a) the application meets the above criteria;

(b) the period of leave to be granted.

36—LEAVE TO ATTEND UNION BUSINESS

(1) This clause replaces Clause 27—Leave to attend association business in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) The Director of Legal Aid shall grant paid leave during ordinary working hours to an employee—

(a) who is required to give evidence before any Industrial Tribunal;

(b) who as an union nominated representative is required to attend negotiations and/or conferences between the union and the LAC;

(c) when prior agreement between the union and the LAC has been reached for the employee to attend official union meetings preliminary to negotiations or industrial hearings;

(d) who as an union nominated representative is required to attend joint union/management consultative committees or working parties.

(3) The granting of leave pursuant to sub clause (2) shall only be approved—

(a) where an application for leave has been submitted by an employee a reasonable time in advance;

(b) for the minimum period necessary to enable the union business to be conducted or evidence to be given;

(c) for those employees whose attendance is essential;

(d) when the operation of the organisation is not being unduly affected and the convenience of the Director of Legal Aid impaired.

(4) A leave of absence provided under this clause will be granted at the ordinary rate of pay.

(5) The Director of Legal Aid shall not be liable for any expenses associated with the employee attending to union business.

(6) Leave of absence provided under this clause shall include any necessary travelling time in normal working hours.

(7) The provisions of this clause shall not apply to special arrangements made between the parties which provide for unpaid leave for employees to conduct union business.

(8) The provisions of this clause shall not apply when an employee is absent from work without the approval of the Director of Legal Aid.

37—TRADE UNION TRAINING LEAVE

(1) This clause replaces Clause 28—Trade Union Training Leave in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Subject to the provisions of this clause—

(a) The Director of Legal Aid shall grant paid leave of absence to employees who are nominated by the union to attend short course conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the Director of Legal Aid and the union.

(3) An employee shall be granted up to a maximum of five (5) days' paid leave per calendar year for trade union training or similar courses or seminars as approved.

(4) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(5) Where a holiday as prescribed in Clause 38—Public Holidays falls during the duration of a course, a day off in lieu of that day will not be granted.

(6) The granting of leave in accordance with the provisions of subclause (2) of this clause is subject to the operation of the LAC not being unduly affected and to the convenience of the Director of Legal Aid.

(7) Any application by an employee shall be submitted to the Director of Legal Aid for approval at least four (4) weeks before the commencement of the course, provided that the Director of Legal Aid may agree to a lesser period of notice.

(8) All applications for leave shall be accompanied by a statement from the union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

(9) The Director of Legal Aid shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(10) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

38—PUBLIC HOLIDAYS

(1) The following days shall be allowed as holidays with pay New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Sovereign's Birthday, Foundation Day, Labour Day provided that the Governor may approve another day to be taken as a holiday in lieu of any of the above mentioned days.

(2) Whenever any of the days mentioned in subclause (1) fall on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

39—PUBLIC SERVICE HOLIDAYS

(1) In lieu of the day after the gazetted New Years' Day and Easter Tuesday an employee may take a day in lieu for each of these days provided that the employee normally works that day.

(2) The days in lieu must be taken within the calendar year in which they fall due. That is, the public service holidays are not cumulative.

40—REMOTE ENTITLEMENTS

(1) In recognition of employees employed in either the Goldfields, Kimberley or Pilbara Regional Offices they shall be entitled to additional allowances.

(2) Annual leave remote services

(a) Employees shall receive an additional 37.5 hours annual leave on the completion of each 12 months' of continuous service in any of the respective offices. This annual leave shall be known as annual leave remote services.

(b) Annual leave remote services shall not attract any leave loading.

(c) An employee may be given approval to take the annual leave remote services, before the necessary year of continuous service has been completed, provided it is taken at the LAC's convenience and the employee returns to the office to complete the necessary service.

(d) Where the employee has served continuously for at least 12 months, in either office, and leaves the office because of promotion or transfer, a pro rata annual leave remote services credit is to be cleared at the LAC's convenience and shall be calculated on the following basis:

Completed months of continuous service, in any office, after initial 12 months service

1	2	3	4	5	6	7	8	9	10	11
Pro-rata annual leave remote services (hours)										
Nil	Nil	7.5	7.5	15	15	15	22.5	22.5	30	30

(e) An employee who resigns, retires, is retired or dies shall be paid all accrued annual leave remote services in accordance with this clause. This shall apply to an employee who is dismissed unless the misconduct for which the employee has been dismissed occurred prior to the completion of the qualifying period.

(f) Pro-rata annual leave remote services shall be paid, in accordance to this clause, to an employee who resigns, retires, is retired or in respect of an officer who dies but not to an officer who is dismissed.

(3) Travel Concessions

(a) Employees and their dependants proceeding on annual leave shall be entitled to the following concessions provided the employee has at least 12 months service in either office.

Approved Mode of Travel	Travel Concession	Travelling Time
Air	Air fare for the employee and their dependants	One day each way (Kimberley and Pilbara Offices only)
Road	Equivalent return air fare for employee and dependants	Two days each way (Kimberley and Pilbara Offices only)
Road and Air	Equivalent return air fare for employee and dependants	Two days each way (Kimberley and Pilbara Offices only)

(b) An employee who has less than 12 months service, in either office, and who is required to proceed on annual leave to suit LAC's convenience shall be entitled to the above concessions. The concession may also be given to an employee who proceeds on annual leave before completing 12 months service provided that the employee returns to the area to complete the 12 months service at the expiration of the period of leave.

(c) Travel concessions not utilised within 12 months of becoming due will lapse.

(4) District Allowance

(a) This sub clause replaces Clause 31—District Allowance in the Government Officers Salaries, Allowances and Conditions Award 1989.

(b) For the purpose of this sub clause the following terms shall have the following meaning—

"dependant" in relation to an employee means—

(i) a spouse; or

(ii) where there is no spouse, a child or any other relative resident within the state who rely 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—

(i) a spouse; or

(ii) where there is no spouse, a child or any other relative resident within the state who rely 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 defacto spouse.

"defacto spouse" means a person 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.

(c) For the purpose of this clause, the following District Allowance shall apply—

Broome	$2,196 pa
South Hedland	$2,406 pa
Kalgoorlie	$500 pa

(d) An employee who has a dependant shall be paid double the district allowance as prescribed in paragraph (c) of this sub clause.

(e) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed in paragraph (c) of this sub clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant received and the rate of district or locational 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.

(f) When an employee is on approved annual leave, the officer shall for the period of such leave, be paid the district allowance to which he or she would ordinarily be entitled.

(g) When an employee is on long service leave or other approved leave with pay (other than annual leave), the employee shall only be paid district allowance for the period of such leave if the employee, dependant/s or partial dependant/s remain in the district in which the employee's headquarters are situated.

(h) 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 Director of Legal Aid.

(i) A district allowance shall be paid to any officer ordinarily entitled to receive it, in addition to reimbursement of any travelling, transfer or relieving allowance.

(j) Where an officer whose headquarters is located other than in Broome, Port Hedland or Kalgoorlie and is required to travel or temporarily reside for any period in excess of one month where the district allowance is payable, the employee shall be paid for the whole of such a period a district allowance at the appropriate rate prescribed in paragraph (c) of this sub clause, for the district which the employee spends the greater period of time.

(k) Where an employee is provided with free board and lodging by the Director of Legal Aid the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled under this sub clause.

(l) An employee who is employed on a part time basis shall be entitled to the district allowance on a pro rata basis. The allowance payable shall be determined by—

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{\text{appropriate district allowance}}{1}$$

(5) Air Conditioning Subsidy

(a) Subsidy payments are limited to the total amount of the electricity account or the maximum level of the subsidy, whichever is the lesser amount.

(b) A subsidy is claimable by an eligible single employee, providing that the employee is not living with parents or with some other person currently receiving a subsidy from any other source—either Government or private industry. A proportional subsidy is only claimable where the eligible single employee is sharing accommodation.

(c) The subsidy is claimable regardless of whether the employee is housed in Government Employees Housing Authority housing or privately owned/rented accommodation.

(d) Stockpiling of unused units during the subsidy period is not permitted.

(e) The subsidy is available to part time employees on a pro rata basis.

(f) Where electricity is provided by the private generation of power a subsidy is claimable at the rate which would be paid had the power been provided by an external source.

(g) Subsidy payments do not apply where the employee's spouse or defacto spouse is in receipt of a subsidy from the Director of Legal Aid, unless the employer is the Government, in which case only one partner is eligible to claim the subsidy.

(h) The following times are when the air conditioning subsidy can be claimed—

	Night Criteria		Day Criteria	
	Months	Period	Months	Period
Broome	7	Oct—April	7	Oct—April
Kalgoorlie	2	Jan—Feb	2	Jan—Feb
South Hedland	6	Nov—April	7	Oct -April

(i) Varying subsidies apply depending on the type of accommodation and particular type of air conditioning system servicing the accommodation.

(i) Houses with individual room air conditioning units

Where an air conditioning unit is provided for night time cooling of the first (main) bedroom, the maximum subsidy claimable is 480 units of electricity per approved month.

Where an air conditioning unit is provided for day time cooling of the living room/kitchen area, the maximum subsidy is 640 units of electricity per approved month to make allowance for the larger sized unit servicing the living area.

Where a third air conditioning unit is provided for use in the second bedroom for night cooling an additional maximum subsidy of 480 units of electricity per approved subsidy is claimable, but only in circumstances where the second bedroom is normally in use.

The maximum subsidy claimable for houses provided with individual room air conditioning units is 1600 units of electricity per approved subsidy month.

(ii) Houses with ducted air conditioning systems

The maximum subsidy claimable for houses with ducted systems is 1600 units per approved month.

Where the subsidy only applies for day or night use criteria, then the subsidy is only 800 units per approved month.

(iii) Apartments/Units

The maximum subsidy claimable for apartments/units with ducted air conditioning systems is 1200 units of electricity per approved month where the subsidy is provided for both day and night. When the subsidy applies for only day or night cooling, the maximum subsidy claimable is 600 units of electricity per approved month.

(j) Method of Calculation

(i) The subsidy is to be calculated on the cost per unit of electricity and is to be apportioned according to the number of approved days within the period covered by the electricity account. The amount of subsidy paid is not to exceed the total amount paid for the electricity during the period.

(ii) The rate per unit is calculated at 12.29 cents.

41—HIGHER DUTIES ALLOWANCE

(1) This clause replace Clause 14—Higher Duties Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) An employee shall be paid a higher duties allowance provided—

(a) the employee is directed by the Director Legal Aid or a duly authorised employee to act in a position which is classified higher than their own position; and

(b) the acting is for a period of five (5) consecutive working days.

(3) Payment

(a) Where the employee accepts the full duties and responsibilities the payment of higher duties allowance shall be the difference between the employee's substantive salary and the salary of the position in which the employee is acting.

(b) An employee shall only be paid a partial higher duties allowance consisting of the appropriate percentage where—

(i) two or more employees share the acting; or

(ii) the employee does not or is not required to undertake the full duties and responsibilities of the position.

(4) Increments

(a) Subject to satisfactory performance, an employee shall receive payment to the next incremental point in the position in which s/he is acting when they have been acting for twelve months.

(b) When an employee commences acting all previous acting for a period of one week or more at an equivalent level or higher during the preceding eighteen months will aggregate as qualifying service for the purposes of achieving the next increment.

(5) Leave

(a) An employee who has been acting for a period of twelve months or more shall continue to receive payment of higher duties allowance during period of approved leave providing the period of leave taken is four weeks or less.

(b) An employee who has been acting in a position for less than 12 months shall continue to receive payment of higher duties allowance provided—

(i) the period of approved leave taken is four week or less; and

(ii) no other employee acts in the position whilst the employee is on leave; and

(iii) the employee resumes acting in the office immediately on his/her return from leave.

(c) Employees who proceed on more than four weeks approved leave shall not be paid higher duties allowance for the whole or any part of the leave.

(6) Sick leave or public holiday on first or last day of acting period

When an employee has been selected to work in a higher level position for a period of five consecutive days and the employee is absent on sick leave on the first or last day of the scheduled period of acting, or the first or last day is a public holiday, the employee is not entitled to payment of higher duties allowance for any of the period of acting.

(7) Public Holiday during a period of acting

When an employee has been selected to work in a higher level position for a period of five consecutive days and a public holiday(s) occurs during those five days, but not on the first or last of the period of acting, the employee is entitled to payment of higher duties allowance for the full five days including the public holiday(s).

(8) Sick leave during a period of acting

An employee who is selected to act in a higher level position for a period of five consecutive days and who is on approved sick leave during those five days, but not on the first or last days of the acting period, may be paid higher duties allowance for the full period only if no other employee is directed to perform the duties of the higher level position for any part of the first employee's absence on sick leave. Should another employee be directed to perform the higher level duties for any part of the first employee's absence, neither employee shall be eligible to receive an allowance for any part of the five days.

(9) Public holidays at the end of a period of acting

An employee who has completed at least five days in a higher level position, for which the employee is being paid a higher duties allowance, immediately preceding the Christmas, New year or Easter holiday periods (or another public holiday) but who will not be continuing to act in the higher level position after the public holidays shall not be entitled to payment of the allowance for those public holidays.

(10) Flexi day off during the acting period

(a) An employee who is selected to act in a higher level job for five consecutive days and who has a flexi day on any of the five days shall not be entitled to payment of higher duties allowance for any of the five days.

(b) An employee who is selected to act in a higher level position for more than five days and who has a flexi day off during the period of acting shall be entitled to payment of higher duties allowance for the entire period of acting. However, should the rostered day off occur on either the first or last day of the acting period, the employee shall not be entitled to payment of the allowance for that day. Where a public holiday follows immediately upon the conclusion of a period of acting, and the employee has a flexi day on the day following a public holiday, higher duties allowance shall not be payable on either the public holiday or the flexi day.

(11) Time off in lieu

Should an employee establish an entitlement to time off in lieu of over time while receiving a higher duties allowance, the time off would need to be taken during the acting period for the salary paid to be at the higher rate.

42—TEMPORARY SPECIAL ALLOWANCE

(1) The Director of Legal Aid may grant a Temporary Special Allowance (TSA) based on additional temporary duties and responsibilities undertaken by an employee.

43—DISTURBANCE ALLOWANCE

(1) This clause replaces Clause 32—Disturbance Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Where an employee is transferred and incurs expenses in the areas referred to in sub clause (3) of this clause as a result of that transfer then the employee shall be granted a disturbance allowance and shall be reimbursed by the Direc-

tor of Legal Aid the actual expenditure incurred upon production of receipts or such other evidence as may be required.

(3) The disturbance allowance shall include—

(a) costs incurred for telephone installation at the employee's new residence provided that the cost of telephone installation shall be reimbursed only where a telephone was installed at the employee's residence including Government owned accommodation;

(b) costs incurred when the connection or reconnection of services to the employee's household including Government owned accommodation for water, gas or electricity;

(c) costs incurred with the redirection of mail to the employee's new residence for a period of no more than three months.

44—MOTOR VEHICLE ALLOWANCE

(1) This clause replaces Clause 35 Motor Vehicle Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) For the purpose of this clause the following expressions shall have the following meaning—

(a) "metropolitan area" means that area within a radius of 50 kilometres of the Perth Railway Station.

(b) "southwest land division" means the southwest land division as defined by section 29 of the Land Act 1933 excluding the area contained within the metropolitan area.

(c) "rest of state" means that area sought of 23.5 degrees south latitude, excluding the metropolitan area and the southwest land division.

(3) An employee who, is requested by the Director of Legal Aid, voluntarily consents to the use of their own vehicle shall for journeys travelled on official business approved by the Director of Legal Aid be reimbursed all expenses incurred in accordance with the following rates—

Motor Car	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Area and Details	Rate per kilometre		
Metropolitan Area	49.4 cents	43.5 cents	37.9 cents
South West Land Division	50.5 cents	44.6 cents	38.9 cents
North of 23.5° South Latitude 56.2°	56.2 cents	50.0 cents	43.5 cents
Rest of the State	52.2 cents	46.0 cents	40.0 cents

In relation to a motor cycle the allowance payable is 17.1 cents per kilometre.

(4) In relation to sub clause (3) an employee shall not be entitled to reimbursement for any expenses incurred in respect to the distance between the employee's residence and headquarters and the return distance from headquarters to residence.

(5) Where an employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in sub clause (3).

45—RELIEVING ALLOWANCE

(1) This clause replaces Clause 38—Relieving Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) An employee who is required to take up duty away from headquarters on relief duty or to perform special duty, and necessarily resides temporarily away from the employee's usual place of residence, shall be reimbursed reasonable expenses on the following basis or any other mutually acceptable arrangements that are made between the employee and the employer—

(a) Where the employee is supplied with accommodation and meals free of charge reimbursement shall be in accordance with the following rates to meet incidental expenses—

WA—South of 26° south latitude	$7.20
WA—North of 26° south latitude	$9.20
Interstate	$9.20

(b) Where the employee is fully responsible for accommodation, meals and incidental expenses and hotel or motel accommodation is utilised—

(i) For the first 42 days after arrival at the new locality reimbursement shall be in accordance with the following rates—

WA—metropolitan hotel or motel	$144.85
Locality south of the 26° south latitude	$103.05
Locality north of the 26° south latitude:	
Broome	$182.00
Carnarvon	$119.90
Dampier	$130.90
Derby	$128.00
Exmouth	$130.65
Fitzroy Crossing	$151.40
Gascoyne Junction	$88.15
Halls Creek	$150.15
Karratha	$186.10
Kununurra	$153.60
Marble Bar	$116.15
Newman	$185.15
Nullagine	$ 86.65
Onslow	$147.15
Pannawonica	$105.65
Paraburdoo	$159.70
Port Hedland	$149.50
Roebourne	$103.20
Sandfire	$ 75.15
Shark Bay	$158.65
Tom Price	$150.40
Turkey Creek	$ 81.65
Wickham	$129.15
Wyndham	$118.15
Interstate Capital City:	
Sydney	$167.05
Melbourne	$155.40
Other Capital Cities	$147.80
Interstate—other than capital city	$103.05

(ii) For periods in excess of 42 days after arrival in the new locality reimbursement shall be in accordance with following rates. Column A is applicable for employees with dependants and Column B for employees without dependants. Provided that the period of reimbursement under this subclause shall not exceed 49 days without the approval of the Director of Legal Aid.

	Column A	Column B
WA—metropolitan hotel or motel	$72.45	$48.25
Locality south of the 26° south latitude	$51.50	$34.30
Locality north of the 26° south latitude:		
Broome	$91.00	$60.60
Carnarvon	$59.95	$39.95
Dampier	$65.45	$43.60
Derby	$64.00	$42.60
Exmouth	$65.30	$43.50
Fitzroy Crossing	$75.70	$50.40
Gascoyne Junction	$44.05	$29.35
Halls Creek	$75.05	$50.00
Karratha	$93.05	$62.00
Kununurra	$76.80	$51.15
Marble Bar	$58.05	$38.70
Newman	$92.55	$61.65
Nullagine	$43.30	$28.85
Onslow	$73.55	$49.00
Pannawonica	$52.80	$35.20
Paraburdoo	$79.85	$53.20

	Column A	Column B
Port Hedland	$74.75	$49.80
Roebourne	$51.60	$34.40
Sandfire	$37.55	$25.00
Shark Bay	$79.30	$52.80
Tom Price	$75.20	$50.15
Turkey Creek	$40.80	$27.20
Wickham	$64.55	$43.00
Wyndham	$59.05	$39.35
Interstate Capital City:		
Sydney	$83.55	$55.65
Melbourne	$77.70	$51.75
Other Capital Cities	$73.90	$49.20
Interstate—other than capital city	$51.50	$34.30

(c) Where the employee is fully responsible for accommodation, meals and incidental expenses and other than hotel or motel accommodation is utilised reimbursement shall be in accordance with the following rates—

WA—South of 26° south latitude	$50.70
WA—North of 26° south latitude	$58.50
Interstate	$58.50

(3) Reimbursement of expenses shall not be suspended should an employee become ill whilst on relief duty, provided leave for the period of such illness is approved in accordance with the provisions of Clause 27—Sick Leave of the Agreement and the employee continues to incur accommodation, meal and incidental expenses.

(4) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred, an appropriate rate of reimbursement shall be determined by the Director of Legal Aid.

(5) The provision of Clause 48—Travelling Allowance of the Agreement shall not operate concurrently with the provisions of this clause to permit an employee to be paid allowances in respect of both travelling and relieving expenses for the same period. Provided that where an employee is required to travel on official business which involves an overnight stay away from the employee's temporary headquarters the Director of Legal Aid may extend the period specified in paragraph (b) of subclause (2) of this clause by the time spent in travelling.

(6) An employee who is directed to relieve another employee or to perform special duty away from the employee's usual headquarters and is not required to reside temporarily away from the employee's usual place of residence shall, if the employee is not in receipt of a higher duties or special allowance for such work, but reimbursed the amount of additional fares paid in travelling by public transport to and from the place of temporary duty.

46—REMOVAL ALLOWANCE

(1) This clause shall replace Clause 39—Removal Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) When an employee is transferred to a new locality in the interest of the Legal Aid Commission, or in the ordinary course of promotion or transfer or on account of illness due to causes over which the employee has no control, the employee shall be reimbursed—

(a) The actual reasonable cost of conveyance of the employee and dependants.

(b) The actual cost (including insurance) of the conveyance of the employee's household furniture effects and appliances up to a maximum volume of 35 cubic metres, provided that a larger volume may be approved by the Director of Legal Aid in special cases.

(c) An allowance of $479.00 for accelerated depreciation land extra wear and tear on furniture, effects and appliances for each occasion that an officer is required to transport furniture, effects and appliances. Provided that the Director of Legal Aid is satisfied that the value of household furniture, effects and appliances moved by the employee is at least $2,867.00.

(d) Reimbursement of reasonable expenses in kennelling and transporting of a domestic pet or pets up to a maximum amount of $124.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or employee's dependents for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or horses.

(3) An employee who on account of misconduct, is transferred, must bear the whole cost of removal or otherwise determined by the Director of Legal Aid prior to removal.

(4) An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of one motor vehicle. If authorised by the Director of Legal Aid to travel to a new locality in the employee's own motor vehicle, reimbursement shall be on the basis of one half of the appropriate rate prescribed in Clause 44(3)—Motor Vehicle Allowance of the Agreement.

(5) The employee shall, before removal is undertaken, obtain quotes from at least two (2) carriers which shall be submitted to the Director of Legal Aid who may authorise the acceptance of the more suitable. Provided that the payment for a volume amount beyond 35 cubic metres is not to occur without the written approval of the Director of Legal Aid having first being obtained.

(6) The Director of Legal Aid may, in lieu of conveyance, authorise payment of an amount not exceeding the maximum prescribed paragraph (b) of subclause (2) of this clause to compensate for loss in any case where an employee with prior approval of the Director of Legal Aid, disposes of the employee's furniture, effects and appliances instead of removing them to the employee's new headquarters. Provided that such payment shall not exceed the sum which would have been paid if such furniture, effects and appliances had been removed by the cheapest method of transport available and the volume was 35 cubic metres.

(7) Where an employee is transferred to Government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, they shall be reimbursed the actual cost of such storage up to a maximum allowance of $890.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage of the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the Director of Legal Aid.

(8) Receipts must be produced for all amounts claimed.

47—TRANSFER ALLOWANCE

(1) This clause replaces Clause 41—Transfer Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Subject to subclauses (3) and (5) of this clause, an employee who is transferred to a new locality in the public interest or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, shall be paid at the following rates for a period of 21 days after arrival at the new headquarters or the employee may negotiate any other arrangement that is mutually acceptable to the employer and employee.

WA—metropolitan hotel or motel	$144.85
Locality south of the 26° south latitude	$103.05
Locality north of the 26° south latitude:	
Broome	$182.00
Carnarvon	$119.90
Dampier	$130.90
Derby	$128.00
Exmouth	$130.65
Fitzroy Crossing	$151.40
Gascoyne Junction	$88.15
Halls Creek	$150.15
Karratha	$186.10

Kununurra	$153.60
Marble Bar	$116.15
Newman	$185.15
Nullagine	$86.65
Onslow	$147.15
Pannawonica	$105.65
Paraburdoo	$159.70
Port Hedland	$149.50
Roebourne	$103.20
Sandfire	$75.15
Shark Bay	$158.65
Tom Price	$150.40
Turkey Creek	$81.65
Wickham	$129.15
Wyndham	$118.15
Interstate Capital City:	
Sydney	$167.05
Melbourne	$155.40
Other Capital Cities	$147.80
Interstate—other than capital city	$103.05

Provided that if an employee is required to travel on official business during the period, such period will be extended by the time spent in travelling. Under no circumstances, shall the provisions of this subclause operate concurrently with those of Clause 48—Travelling Allowance to permit an employee to be paid allowances in respect of both travelling and transfer expenses for the same period.

(3) Prior to payment of an allowance specified in subclause (2), the Director of Legal Aid shall—

(a) require the employee to certify that permanent accommodation has not been arranged or is not available from the date of transfer. In the event that permanent accommodation is to be immediately available, no allowance is payable; and

(b) require the employee to advise the Director of Legal Aid that should permanent accommodation be arranged or become available within the prescribed allowance period, the employee shall refund a pro rata amount of the allowance for that period the occupancy in permanent accommodation takes place prior to the completion of the prescribed allowance period.

Provided also that the should an occupancy date which falls within the specified allowance period be notified to the Director of Legal Aid prior to the employee's transfer, the payment of a pro rata amount of the allowance should be made in lieu of the full amount.

(4) When it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred by the employee on transfer, an appropriate rate of reimbursement shall be determined by the Director of Legal Aid.

(5) An employee who is transferred to Government owned accommodation shall not be entitled to reimbursement under this clause. Provided that—

(a) where the entry into the Government owned accommodation is delayed through circumstances beyond the employee's control an employee may, subject to the production of receipts, be reimbursed actual reasonable accommodation and meal expenses for the employee and dependants less a deduction for the following normal living expenses—

Each adult	$17.60
Each child	$2.90

and provided that—

(b) if any costs are incurred under subclause (3) of Clause 43—Disturbance Allowance they shall be reimbursed by the Director of Legal Aid.

48—TRAVELLING ALLOWANCE

(1) This clause replaces Clause 42—Travelling Allowance in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) An employee who travels on official business shall be reimbursed expenses on the following basis—

(a) When a trip necessitates an overnight stay away from headquarters and the employee—

(i) is supplied with accommodation and meals free of charge; or

(ii) attends a course, conference, etc; where the fee paid includes accommodation and meals,

reimbursement shall be in accordance with the following rates—

WA—South of 26° south latitude	$7.20
WA—North of 26° south latitude	$9.20
Interstate	$9.20

(b) When a trip necessitates an overnight stay away from the employee's headquarters and the employee is fully responsible for the provision of accommodation, meals and incidental expenses:

(i) where hotel or motel accommodation is utilised reimbursement shall be in accordance with the following rates upon production of receipts—

WA—metropolitan hotel or motel	$144.85
Locality south of the 26° south latitude	$103.05
Locality north of the 26° south latitude:	
Broome	$182.00
Carnarvon	$119.90
Dampier	$130.90
Derby	$128.00
Exmouth	$130.65
Fitzroy Crossing	$151.40
Gascoyne Junction	$88.15
Halls Creek	$150.15
Karratha	$186.10
Kununurra	$153.60
Marble Bar	$116.15
Newman	$185.15
Nullagine	$ 86.65
Onslow	$147.15
Pannawonica	$105.65
Paraburdoo	$159.70
Port Hedland	$149.50
Roebourne	$103.20
Sandfire	$ 75.15
Shark Bay	$158.65
Tom Price	$150.40
Turkey Creek	$ 81.65
Wickham	$129.15
Wyndham	$118.15
Interstate Capital City:	
Sydney	$167.05
Melbourne	$155.40
Other Capital Cities	$147.80
Interstate—other than capital city	$103.05

(ii) where other than hotel or motel accommodation is utilised reimbursement shall be in accordance with the following rates—

WA—South of 26° south latitude	$50.70
WA—North of 26° south latitude	$58.50
Christmas Island	$58.50
Cocos Island	$58.50
Interstate	$58.50

(c) When a trip necessitates an overnight stay away from headquarters and accommodation only is provided at no charge for the employee, reimbursement shall be made in accordance with the following rates—

WA—South of 26° south latitude	$7.20
WA—North of 26° south latitude	$9.20
Interstate	$9.20

and

WA—South of 26° South Latitude	
Breakfast	$9.80
Lunch	$9.80
Evening Meal	$24.00
WA—North of 26° South Latitude	
Breakfast	$10.40
Lunch	$15.00
Evening Meal	$23.90
Interstate	
Breakfast	$10.40
Lunch	$15.00
Evening Meal	$23.90

subject to the employee's certification that each meal claimed was actually purchased.

(3) To calculate reimbursement under subclause (2) for a part of a day, the following formula shall apply—

(a) If departure from headquarters is—

before 8.00 am—100% of daily rate

8.00 am or later but prior to 1.00 pm—90% of the daily rate

1.00 pm or later but prior to 6.00 pm—75% of the daily rate

6.00 pm or later—50% of the daily rate.

(b) If arrival back at headquarters is—

8.00 am or later but prior to 1.00 pm—10% of the daily rate

1.00 pm or later but prior to 6.00 pm—25% of the daily rate

6.00 pm or later but prior to 11.00 pm—50% of the daily rate

11.00 pm or later—100% of the daily rate.

(4) When an employee travels to a place outside a radius of 50 kilometres measured from the employee's headquarters, and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the following rates—

WA—South of 26° South Latitude	
Breakfast	$9.80
Lunch	$9.80
Evening Meal	$24.00
WA—North of 26° South Latitude	
Breakfast	$10.40
Lunch	$15.00
Evening Meal	$23.90

subject to the employee's certification that each meal claimed was actually purchased. Provided that when an employee departs from headquarters before 8.00 am and does not arrive back at headquarters until after 11.00 pm on the same day reimbursement shall be at the appropriate following rate:

(5) When it can be shown to the satisfaction of the Director of Legal Aid by the production of receipts that the appropriate reimbursement does not cover an employee's reasonable expenses for a whole trip the employee shall be reimbursed the excess expenditure.

(6) In addition rates contained in this clause and employee shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls on production of receipts. Alcohol and other personal expenses will not be reimbursed.

(7) If, on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee shall be reimbursed the actual cost of such accommodation.

(8) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with the provisions of this Agreement and the employee continues to incur accommodation, meal and incidental expenses.

(9) Reimbursement claims for travelling in excess of 14 days in one month shall not be passed for payment by a certifying officer unless the Director of Legal Aid has endorsed the account.

(10) An employee who is relieving at or temporarily transferred to any place within a radius of 50 kilometres measured from the employee's headquarters shall not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from headquarters over the usual midday meal period shall be paid $4.25 for each meal necessarily purchased, provided that—

(a) such travelling is not a normal feature of the performance of the employee's duties; and

(b) such travelling is not within the suburb in which the employee resides; and

(c) total reimbursement under this subclause for any day period shall not exceed $23.10 per pay period.

49—WEEKEND ABSENCE FROM RESIDENCE

(1) This clause shall replace Clause 43—Weekend Absence From Residence in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) An employee who is temporarily absent from normal headquarters on relieving duty or travelling on official business outside a radius of 320 kilometres measured from normal headquarters, and is necessarily absent from his or her residence and separated from dependants, shall be granted an additional day's leave for every group of three consecutive weekends so absent provided that each weekend shall be counted as a member of only one group provided—

(a) the relief duty or travelling on official business is within Australia and the employee is not directed to work on the weekend by the Director of Legal Aid;

(b) an additional day's leave shall not be allowed if the Director of Legal Aid has approved the employee's family accompanying the employee during the period of relief or travelling;

(c) additional leave under this subclause shall be commenced within one month of the period of relief duty or travelling being completed unless the Director of Legal Aid approves otherwise;

(d) this leave does not attract a leave loading.

(3) An employee who is temporarily absent from normal headquarters on relieving duty or travelling on official business outside a radius of 320 and upto 400 kilometres measured from normal headquarter, may elect to have the benefit of concessions provided by subclause (4) of this clause in lieu of those provided by subclause (2). Kalgoorlie, Albany and Geraldton shall be regarded as being within a radius of 400 kilometres for the purposes of this subclause in the case of an employee resident in the metropolitan area.

(4) An employee who is temporarily absent from normal headquarters and such relief duty or travel would normally necessitate the employee being absent from the employee's residence for a weekend, shall be allowed to return to their residence for the weekend. Provided that—

(a) an employee who is directed to work on a weekend by the Director of Legal Aid shall not be entitled to the concessions provided by this subclause;

(b) all travelling to and from the employee's residence shall be undertaken outside the hours of duty prescribed by Clause 18—Hours of Duty of this Agreement;

(c) an employee, who has obtained the approval of the Director of Legal Aid for the family to accompany the employee during the period of relief or travelling shall not be entitled to the concessions provided by this subclause;

(d) when an employee is authorised by the Director of Legal Aid to use the employee's own motor vehicle to travel to the locality where the relief duty is being performed or when travelling on official business the employee shall be reimbursed on the basis of one half of the appropriate rate prescribed by Clause 44 (3)—Motor Vehicle Allowance of this Agreement, for the journey to the employee's residence for the weekend and the return to the place of relief duty. Provided that the maximum amount of reimbursement shall not exceed the cost of the rail or bus fare

by public transport conveyance which otherwise would be utilised for such journey and payment shall be made only to the owner of the vehicle;

(e) when an employee has been authorised by the Director of Legal Aid to use the Director of Legal Aid's motor vehicle in connection with the relief duty or travelling on official business, the employee shall be allowed to use that vehicle for the purpose of returning to the employee's residence for the weekend;

(f) an employee who does not use a private motor vehicle or the Director of Legal Aid's motor vehicle as provided by paragraphs (d) and (e) of this subclause, shall be reimbursed the cost of the fare by public conveyance by road or rail for the journey, to and from the employee's residence for the weekend;

(g) an employee who does not make use of the provisions of this subclause shall be paid travelling allowance or relieving allowance as the case may require in accordance with the provisions of Clause 48—Travelling Allowance or Clause 45—Relieving Allowance of this Agreement;

(h) employees who return to their residence for the weekend in accordance with the provisions of the subclause shall not be entitled to the reimbursement of any expenses allowed by Clause 45—Relieving Allowance and Clause 48—Travelling Allowance of this Agreement during the period from the time of departing from such residence to travel to resume duty at the place away from the residence.

50—OVERTIME

(1) This clause shall replace Clause 18—Overtime in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) In this clause the following expressions shall have the following meaning—

(a) "Prescribed hours of duty" means the employee's normal working hours as prescribed in Clause 18 Hours of Duty of this Agreement or written instruction issued out of that clause.

(b) "Public holiday" means the days prescribed in Clause 38—Public Holiday of this Agreement.

(c) "Ordinary travelling time" means the time which an employee would ordinarily spend in travelling by public transport once daily from the employee's home to the employee's usual headquarters and home again. It is the time elapsing between the time of departure from home and the official time of commencement of duty and the official time of cessation of duty and arrival at home. Where an employee has a continuing approval to use a vehicle for official business, ordinary travelling time means the time spent in travelling by that vehicle from home to headquarters and home again each day.

(d) "A day" shall mean from midnight to midnight.

(e) "Overtime" shall mean such hours of work as an employee may be required by the Director of Legal Aid to perform being hours of such hours specified in subclause (4).

(f) "On call" shall mean a written instruction to an employee rostered to remain at the employee's residence or to otherwise be immediately contactable by telephone or paging system outside the employee's normal hours of duty in case of a call out requiring an immediate return to duty.

(3) When and as often as it is necessary to overcome arrears of work or to meet pressure of business, any employee may be required by the Director of Legal Aid to perform overtime at times other than the ordinary hours of attendance applicable to that employee.

(4) All work performed by an employee whose hours of attendance are determined in accordance with subclause (2) of Clause 18—Hours of duty of this Agreement by direction of the Director of Legal Aid—

(a) Before or after the prescribed hours of duty on a weekday or after 10 hours worked which ever is the lesser; and

(b) On a Saturday, Sunday or public holiday, shall be classed as overtime and, subject to the provisions of this clause, shall be paid for at the hourly rate prescribed in subclause (5).

(5) Payment of overtime

(a) Payment for over time shall be calculated on an hourly basis in accordance with the following formula—

Weekdays:

For the first three hours on any one week day:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{3}{2}$$

After the first three hours on any one week day:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{2}{1}$$

Saturdays:

First three hours on any Saturday:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{3}{2}$$

After the first three hours or after 12 noon, which ever is the earliest, on any Saturday:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{2}{1}$$

Sundays:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{2}{1}$$

Public Holidays:

During prescribed hours of duty:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{3}{2}$$

In addition to the normal days pay.

During hours outside of the prescribed hours of duty:

$$\frac{\text{Fortnightly salary}}{75} \times \frac{5}{2}$$

(b) For the purpose of this clause, fortnightly salary shall not include any district allowances, personal allowances, service allowances, temporary special allowance or higher duties allowance, unless approved by the Director of Legal Aid.

(c) A temporary special allowance or higher duties allowance shall be included in "fortnightly salary" when overtime is worked on duties for which these allowances are specifically paid.

(6) No claim for payment or time off in lieu under the provisions of this clause shall be allowed in respect of any day on which the additional time worked amounts to less than 30 minutes.

(7) Where an employee having received prior notice, is required to return to duty—

(a) On a Saturday, Sunday or public holiday, other than during the prescribed hours of duty the employee shall be entitled to payment at the rate in accordance with subclause (5) for a minimum period of three hours.

(b) Before or after the prescribed hours of duty on a weekday the employee shall be entitled to payment at the rate in accordance with subclause (5) for a minimum period of one hour 30 minutes.

(c) For the purposes of this paragraph, where an employee is required to return to duty more than once each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.

(8) When an employee is directed to work overtime at a place other than the usual headquarters, and provided that place where the overtime is to be worked is situated in the areas within a radius of 50 kilometres from the usual headquarters, and the time spent in travelling to and from that place is in excess of the time which an employee should ordinarily spend in travelling to and from the usual headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such excess time shall be deemed to form part of the overtime worked.

(9) When an employee is directed to work overtime at a place other than the usual headquarters and provided that the place where the overtime is to be worked is situated outside the area within the radius of 50 kilometres from the usual headquarters and the time spent in travelling to and from that place is in excess of the time which an employee would ordinarily spend in travelling to and from the usual headquarters, then the employee shall be granted time off in lieu of such excess time spent in actual travel in accordance with subclause 15.

(10) Payment for overtime, or granting of time off in lieu of overtime or travelling time shall not be approved in the following cases—

(a) Officers whose maximum salary or maximum salary and allowance in the nature of salary exceeds the gross annual equivalent to time in respect of level 5 as contained in Clause 15—Salary of this Agreement.

(b) Employees whose work is not subject to close supervision.

(11) Where an employee performs overtime duty after the time at which the employee's normal hours of duty end on one day and before the time at which the employee's normal hours of duty are to commence on the next succeeding day which results in the employee not being off duty between these times for a continuous period of at least ten hours, the employee is entitled to be absent from duty without loss of salary from the time of ceasing overtime duty, until the employee has been off duty for a period of ten hours.

Where an employee is required to return to or continue work without a break provided in the above paragraph then the employee shall be paid at double the ordinary rate until released from duty or until the officer has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.

(12) Where an employee is required to work a continuous period of overtime which extends past midnight into the succeeding day the time worked after midnight for the purpose of payment provided for in paragraph (a) subclause (5).

(13) Part time employees are covered by the provisions of this Agreement. However, if an employee is not entitled to flexi time and the hours worked exceed 7.5 hours on any day and the time worked over 7.5 hours will be classified as overtime as outlined in this clause.

(14) On call

(a) An employee who is required by the Director of Legal Aid to be "on call" during periods off duty shall be paid the following allowance—

$$\frac{\text{Level 2 (minimum) weekly rate}}{37.5} \times 1 \times \frac{18.75}{100}$$

(b) Where an employee is required to be "on call" and the means of contact is to be by telephone the Director of Legal Aid shall—

(i) where the telephone is not already installed, pay the cost of such installation;

(ii) where an employee pays or contributes towards the payment of the rental of such telephone, pay the employee 1/52nd of the annual rental paid by the employee for each seven days or part thereof on which an employee is rostered to be "on call".

(iii) Provided that where as a usual feature of the duties an employee is regularly rostered to be on "on call", pay the full amount of the telephone rental.

(c) An employee shall be reimbursed the cost of all telephone calls made on behalf of the Director of Legal Aid as a result of contact according to the definition of "on call".

(d) Where an employee is rostered for "on call" is recalled for duty during the period for which the officer is on "out of hours contact" then the employee shall receive payment for the hours worked in accordance with paragraph (a) subclause (5) of this clause.

(e) Time spent in travelling to and from the place of duty where an employee rostered on "on call" is actually recalled to duty, shall be included with actual duty performed for purposes of overtime payment.

(f) Minimum payment provisions do not apply for an employee rostered for "on call" duty.

(g) An employee in receipt of a "on call" allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with paragraph (i) of this subclause.

(h) Employees subject to this clause shall, where practicable, be periodically absented from any requirement to hold themselves on "on call".

(i) Where an employee is called on duty to meet an emergency at a time when the employee would not normally have been on duty and no notice of such call was given prior to completion of usual duty on the last day of work prior to the day on which the employee is called on duty, if called to duty—

(i) on a Saturday, Sunday or Public Holiday otherwise than during the prescribed hours of duty the employee shall be entitled to payment in accordance with paragraph (a) of subclause (5) of this clause for a minimum period of three hours;

(ii) before or after the prescribed hours of duty on a weekday the employee shall be entitled to payment at the rate prescribed in paragraph (a) of subclause (5) of this clause for a minimum period of two hours 30 minutes;

(ii) for the purpose of this paragraph, where an employee is recalled more than once, each period of emergency duty shall stand alone in respect of the application of the minimum period payment, subject to paragraph (k) of this subclause.

(j) Time spent travelling to and from the place of duty where the employee is actually recalled to perform emergency duty shall be included with actual duty performed for the purposes of overtime payment.

(k) An employee recalled to work to perform emergency duty shall not be obliged to work the minimum period if the work is completed in less time, provided that an employee called out more than once within any such minimum period shall not be entitled to any further payment for the time worked within the minimum period.

(15) An employee eligible for payment of overtime in accordance with subclause (9) of this clause, who is required to travel on official business outside of the employee's normal working hours and away from the employee's usual headquarters, shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays and public holidays, provided—

(a) such travel undertaken at the direction of the Director of Legal Aid.

(b) such travel shall not included—

(i) time spent travelling by an employee on duty at a temporary headquarters to the employee's home for weekends for the employee's own convenience;

(ii) time spent in travelling by plane between the hours of 11.00 pm and 6.00 am;

(iii) time spent in travelling by train or coach between the hours of 1.00 pm and 6.00 am;

(iv) time spent in travelling by ship when meals and accommodation are provided;

(v) time in travelling in which an employee is required by the Director of Legal Aid to drive, outside ordinary working hours of duty, an Director of Legal Aid's vehicle or to drive the employee's own motor vehicle involving the payment of motor vehicle allowance but shall be deemed to be overtime and paid in accordance with paragraph (a) subclause (5) of this clause.

(c) Time off in lieu will not be granted for periods of less than thirty minutes.

(d) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty, and where the urgency of travel compel an employee to travel during the employee's usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.

(e) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty which is in excess of the employee's ordinary travelling time.

(f) Except as provided in paragraph (b) of this subclause, all time spent in actual travel on Saturdays, Sundays, and public holidays provided in Clause 38—Public Holidays of this Agreement, shall be deemed to be excess travelling time.

(16) Meal Breaks

(a) A break of 30 minutes, shall be made for meals between 12. noon and 2.00 pm and between 5.00 pm and 7.00 pm when overtime duty is being performed. Except in the case of emergency, an employee shall not be compelled to work more than five hours' overtime duty without a meal break. At the conclusion of a meal break the calculation of the five hours limit recommences.

(b) An employee required to work overtime who purchases a meal shall be reimbursed for each meal purchased at the following rate—

Breakfast	$5.70 per meal
Lunch	$7.05 per meal
Evening Meal	$8.45 per meal

Provided that the overtime worked when such a meal is purchased totals more than two hours, such reimbursement shall be in addition to any payment for over time to which the employee is entitled.

(c) If an employee, having received prior notification of a requirement to work overtime, is no longer required, then the employee shall be entitled, in additional to any other penalty, to reimbursement for a meal previously purchased.

51—APPRAISAL SYSTEM

(1) All employees of the Legal Aid Commission will participate in the Appraisal System.

(2) The cycle will normally cover a twelve month period.

(3) The appraisal process requires that all staff—

(a) have a performance plan in line with the LAC's objectives;

(b) have clearly defined goals and standards;

(c) receive regular feedback and coaching on their performance;

(d) have opportunities to discuss their accomplishments with managers regularly, and

(e) have their training needs identified on a regular basis.

(4) Performance reviews will be completed within 30 days of the due date.

52—PRIVATE EMPLOYMENT

(1) Upon written application to the Director of Legal Aid approval may be given for employees to engage in part time work unconnected with their official duties where it is unlikely that there will be any—

(a) detrimental effect on the employee's performance;

(b) inconvenience to the LAC;

(c) conflict of interest.

53—VOLUNTARY REGRESSION

(1) Written requests for voluntary regression from employees may be approved by the Director of Legal Aid.

(2) Before approval is given the Director of Legal Aid must be assured that the employee has received adequate counselling regarding the request.

(3) The salary rate upon regression is to be the maximum salary paid in respect to the level to which the employee regresses.

54—NOTIFICATION OF CHANGE

(1) This clause replaces Clause 46—Notification of Change in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) Where the Director of Legal Aid 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 Director of Legal Aid shall notify the employees who may be affected by the proposed changes and the union.

(3) For the purpose of this clause "significant effects" include termination of employment, major changes in the composition, operation or size of the workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs.

(4) Provided that where this Agreement makes provisions for alteration of any of the matters referred to in this clause an alteration shall be deemed not to have significant effect.

(5) The Director of Legal Aid shall discuss with the employees and the Association, inter alia, the introduction of the changes referred to in subclause (2) of this clause, 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.

(6) The discussion shall commence as early as practicable after a firm decisions has been made by the Director of Legal Aid to make the changes referred to in subclause (2) of this clause, unless by prior arrangement, the union is represented on the body formulating recommendations for change to be considered by the Director of Legal Aid.

(7) For the purposes of such discussion the Director of Legal Aid shall provide to the employees concerned and the Association 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 Director of Legal Aid shall not be required to disclose confidential information, the disclosure of which would be inimical the Director of Legal Aid's interests.

55—TIME AND SALARIES RECORD

(1) This clause replaces Clause 45—Time and Salaries Record of the Government Officers Salaries Allowances and Conditions Award (1989).

(2) The Director of Legal Aid shall keep a time and salaries record showing—

(a) the name of each employee;

(b) the nature of work performed;

(c) the hours worked each day;

(d) the salary, allowances and overtime paid to each employee.

(3) The time and salary records, for union members, shall on demand be produced for inspection by the General Secretary or duly accredited official of the union during the hours

of 8.30 am and 5.00 pm and when necessary the duly accredited official of the union may take a copy of the record.

(4) The Union shall—

(a) give prior notification to the Director of Legal Aid on when it proposes to inspect the record;

(b) not conduct interviews between 8.30 am and 5.00 pm in circumstances which will result in the LAC's business being unduly interrupted or otherwise hampered; and

(c) treat with confidentiality any information obtained from time and salary records.

(5) The Director of Legal Aid's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the union calls to inspect it, the record will be made available for inspection at a mutually convenient time at the Director of Legal Aid's office.

(6) If the Director of Legal Aid maintains a personal or other file on an employee subject to the Director of Legal Aid's convenience, the employee shall be entitled to examine all material maintained on that file.

56—RIGHT OF ENTRY

(1) This clause replaces Clause 47—Right of Entry in the Government Officers Salaries, Allowances and Conditions Award (1989).

(2) The General Secretary of the Union or a duly authorised representative shall on notification to the Director of Legal Aid have the right to enter the LAC's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by the Agreement, the legitimate business of the union or for the purpose of investigating complaints concerning the application of the Agreement, but shall in no way unduly interfere with the work of employees.

57—DEDUCTION OF UNION SUBSCRIPTIONS

(1) This is to replace Clause 15—Deduction of Association Subscriptions from the Government Officers Salaries, Allowances and Conditions Award.

(2) The Director of Legal Aid shall deduct the normal union membership subscriptions as equal amounts each pay period from the salary of employees who are members of the union in accordance with their instructions.

(3) Payroll Deduction Authority forms shall be completed by employees.

(4) Where required by the Director of Legal Aid or union, the union General Secretary or person acting in the General Secretary' stead, shall countersign all forms and forward them the Salaries Officer at the LAC.

(5) The Director of Legal Aid shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided by subclause (8) of this clause or until the Payroll Deduction Authority is cancelled in writing by the employee.

(6) Where the Payroll Deduction Authority form authorises the employer to deduct union subscriptions in accordance with the rules of the union the union shall notify the Director of Legal Aid in writing the level of union subscription to be deducted. The Director of Legal Aid shall implement any change to the union subscriptions no later than one month after being notified by the union except where the union nominates a later date.

(7) The collection of any nomination fee, arrears, levies or fines is not the responsibility of the Director of Legal Aid.

(8) Where deduction is not made from an officer in any pay period, either inadvertently or as a result of an employee not being entitled to salary sufficient to cover the subscription it shall be the employee's responsibility to settle the outstanding amount with the Director of Legal Aid direct.

(9) The Director of Legal Aid shall not make any deduction of subscriptions from the employee's termination pay on termination of service, other than normal deductions for the preceding pay period.

(10) The Director of Legal Aid shall forward contributions deducted, together with supporting documentation to the Association at such intervals as are agreed between the Director of Legal Aid and the union.

58—UNION ACCESS

(1) LAC recognises and support the right of unions to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on co-operation between the industrial partners based on mutual recognition and respect.

(2) Role and Responsibilities of Workplace Delegates

(a) As representatives of the union, workplace delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

(b) Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a workplace delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

(c) A workplace delegate must be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

(3) Workplace Delegates—Role in respect to other authorised employee representatives.

(a) Where there are agreed procedures designed to deal with specific issues such as equal employment opportunity and occupational health safety and welfare for which legitimate authorised and trained representatives have been appointed a workplace delegate will refer any such issues arising to the appropriate representative.

(4) The agencies role and responsibilities

(a) LAC recognised appointed/elected workplace delegates and will provide co-operation and support, so that they are able to carry out their role and function effectively. These functions should relate to the rights and interests of the employees in the workplace.

(5) The parties agree to adopt the definition of a workplace as defined in the Occupation, Health, Safety and Welfare Act 1984 as "a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work or are likely to be in the course of their work".

(6) Following the election or appointment of a workplace delegate the union will advise LAC in writing of such election or appointment. The workplace delegate will be issued with written credentials by the union authorising them to act as a workplace delegate in accordance with the provisions of this clause.

(7) LAC shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a workplace delegate. In recognising workplace delegates, LAC acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

(8) LAC and workplace delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of LAC.

(9) Workplace delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a delegate. LAC recognises that workplace delegates will not be threatened or disadvantaged in any way as a result of their role as workplace delegates.

(10) Workplace delegates shall be granted reasonable access to facilities require for the purpose of carrying out their duties. Facilities may include but not be limited to access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and typing facilities.

Such access to facilities shall be negotiated within the branch and shall not unreasonably be withheld or affect the operation of LAC.

(11) Workplace delegates shall have the right to display union material at the workplace on a notice board provided by LAC.

59—RE-OPEN NEGOTIATIONS

(1) The parties undertake to re-open negotiations at least three (3) months prior to the expiry of the period of this Agreement with a view to negotiating and settling any replacement Agreement.

60.—SIGNATORIES

Dated: 28 March 1996

Signed on behalf of
CIVIL SERVICE ASSOCIATION
OF WESTERN AUSTRALIA
(INCORPORATED)

D. Robinson

(Secretary)

THE COMMON SEAL of LEGAL AID
COMMISSION OF WESTERN AUSTRALIA
by the resolution of the Commission was
hereunto affixed in the presence of:

(Member)

(Director of Legal Aid)

LEIGHTON CONTRACTORS PTY LIMITED AGREEMENT 1994 FOR CONSTRUCTION OF THE WANDOO CONCRETE GRAVITY STRUCTURE
No. AG 64 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leighton Contractors Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Others.

No. AG 64 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

30 May 1996.

Order.

HAVING heard Mr M. Creedy on behalf of the Applicant and Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr W. Tracey on behalf of Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the following schedule titled the "Leighton Contractors Pty Ltd Agreement 1994 for Construction Of The Wandoo Concrete Gravity Structure", signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 17th day of April 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Leighton Contractors Pty Limited Agreement 1994 For Construction Of The Wandoo Concrete Gravity Structure.

2.—INDEX

Subject	Clause
Title	1
Index	2
Objectives of the Agreement	3
Scope of the Agreement	4
Parties	5
Period of Operation	6
No Extra Claims	7
Application of Awards	8
Limitation	9
Site Allowance	10
Wage Rates	11
Best Practice	12
Consultative Job Planning	13
Dispute Settlement Procedure	14
Demarcation Procedure	15
Shiftwork	16
Utilisation of Work Skills	17
Rostered Days Off	18
Slipform Operations	19
Inclement Weather	20
Safety	21
Hours	22
Fares, Travel and LAFA	23
Superannuation	24
Redundancy	25
Crib and Meal Times	26
Protective Clothing	27
Shop Stewards Facilities	28
CGS Log of Claims	Appendix A

3.—OBJECTIVES OF THE AGREEMENT

It is acknowledged that this agreement reflects the commitment of all parties to the agreement to create and maintain a co-operative and productive working relationship between management and employees.

4.—SCOPE OF THE AGREEMENT

This agreement shall apply to all on site construction work undertaken by Leighton Contractors Pty Ltd at the casting basin site, Bunbury, in relation to its contract for the construction of the Wandoo Concrete Gravity Structure by 32 employees engaged full time on site under the terms and conditions of the following awards:

: Metal Trades Award Part II Construction

: Electrical Contracting Industry Award

: Transport Workers (General) Award

in classifications relevant to the construction of this project. Provided, however, that with respect to the Transport Workers (General) Award the agreement shall also apply to employees engaged in the removal of spoil from the casting basin site if registered trucks are required.

5.—PARTIES

5.1 This agreement shall apply to the following organisations of employees and their members engaged as employees on the project:

: Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers

: Australian Electrical, Electronic, Foundry and Engineering Workers Union

: Transport Workers Union of Australia

5.2 In order to facilitate a co-operative approach to the construction of this project the major unions, party to this agreement, recognise the rights of each of the others in representing the interests of relevant employees working on this project.

To this end it is agreed that the parties are committed to avoiding any demarcation issues and that should any issue arise the provisions of Clause 15 Demarcation Procedures shall be followed.

6.—PERIOD OF OPERATION

Unless otherwise provided for in this agreement, this agreement shall come into operation on and from 19 September, 1995 and shall continue in operation until the completion of construction of this project, at which time this agreement shall be cancelled.

7.—NO EXTRA CLAIMS

This agreement is made in full and final settlement of all claims with respect to this project and the parties to this agreement shall not make any further claims with respect to this project for the life of this agreement.

This clause does not prevent any party to this agreement raising a substantial employment related matter for consideration and discussion provided that any such matter raised is not covered by this agreement and could not have been foreseen in the making of this agreement.

8.—APPLICATION OF AWARDS

8.1 Unless otherwise provided by this agreement the terms and conditions of employment shall be covered by the following awards as are relevant:

: Metal Trades Award Part II Construction

: Electrical Contracting Industry Award

: Transport Workers (General) Award

The relevant award shall be that which would normally apply to the particular work on a civil engineering construction project.

8.2 Where any provision of this agreement is inconsistent with the provisions of any relevant award, then the provisions of this agreement shall apply. However, if a matter is not covered by this agreement then all employment conditions shall be in accordance with the relevant award.

9.—LIMITATION

9.1 It is agreed that the contents of this agreement shall not be used by any party as a precedent in any matters not directly connected with the work covered by this agreement.

9.2 During employment on this project employees covered by this agreement shall receive only those rates and conditions prescribed by this agreement notwithstanding anything that may apply elsewhere.

10.—SITE ALLOWANCE

10.1 A site allowance of $2.50 per each hour worked shall be paid to each Award employee covered by this agreement.

This allowance is paid to cover all disabilities and special circumstances of work on this project, and shall be paid in lieu of all award special rates and conditions prescribed by the relevant awards with the exception of the rates relating to height/tower allowance which will be payable to an employee when he/she undertakes the particular work as prescribed.

The site allowance prescribed in this clause shall be payable from the 13 September, 1995.

10.2 Additional Payments

On the basis that the commitments and goals established in accordance with this agreement are reasonably being achieved, all employees shall be entitled to receive an additional payment of $650 at the end of each quarter.

Where an employee was not engaged on site on the project for the full quarter period, then such employee shall be entitled to an additional payment made on a relevant pro-rata basis.

This payment shall be payable from the quarter ending September 1995.

10.3 The amounts contained in this clause recognise that all matters contained in the log of claims attached to this agreement as Appendix A, have, through this clause and the agreement, been resolved in full and final settlement between the parties.

11.—WAGE RATES

The following amounts shall be paid in addition to the rate of wage contained in the relevant award(s) as those rates stand after the inclusion of the National Wage Case increase of October 1994.

11.1 The following amounts shall be added to the combined base rate and supplementary payments of the relevant awards for all purposes of the awards:

$30 per week on and from 1 February 1995
$12 per week on and from 1 August 1995
$24 per week on and from 1 February 1996

These amounts shall be paid in lieu of any increases in wage rates arising from National or State Wage Case Decisions or from any future enterprise bargaining agreement(s) during the life of this agreement.

11.2 Whilst payments in clause 10 and clause 11 both apply on the basis described, collectively they also recognise the commitment of all parties to the terms and conditions of this agreement.

Further, these payments shall be in recognition of the participation of the workforce to achieve the successful and safe completion of this project to program and budget.

To achieve this objective, as requested employees will participate with management in periodical reviews of performance in areas such as:

Time

Progress of the project versus program.

Lost Time

The extent of lost time and its causes

Quality

Amount of waste.

Amount of re-work and causes.

Occupational Health and Safety

Operation of the occupational health and safety procedures.

Lost time injury frequency rates.

In reviewing such areas all parties are committed to such action as necessary to achieve the objectives of this agreement.

12.—BEST PRACTICE

Leighton Contractors is committed in relation to this project to achieving best practice levels of performance across all operations including but not limited to management, technology, quality, safety and employer/employee relations.

All parties to this agreement agree to co-operate in relevant areas so that the highest standards of performance can be obtained through the project.

It is recognised by the parties that by demonstrating a commitment to, and achievement of, high levels of performance particularly in the areas of safety and quality, other parties may be encouraged to commit to similar projects.

Should, during the life of this agreement, any changes to the project's operations be required to ensure these objectives are attained, all parties are committed to participate as requested in a process of consultation and cooperation to implement such measures as may be required.

13.—CONSULTATIVE JOB PLANNING

Leighton Contractors shall ensure that supervision informs employees who are to carry out the various elements of the contract what is to be done, what work method, materials and tools are to be used, and what specific hazards may be encountered. Employees are to be encouraged to contribute to this process with the view to contributing to the objectives of best practice.

14.—DISPUTE SETTLEMENT PROCEDURE

14.1 This agreement confirms the intention of the parties to use direct negotiation and consultation between them to eliminate any dispute or grievance which is liable to cause a work stoppage or other form of ban or limitation upon the performance of work on the project.

14.2 Wherever a difficulty, question or dispute arises the following procedure will be adhered to in its entirety.

(a) The employee will discuss the concern with his/her direct supervisor as soon as reasonably practicable.

(b) If not resolved, the employee or the appropriate shop steward will raise the concern with the area supervisor. If not resolved at this stage within a reasonable time the matter shall then proceed to the next stage.

(c) The shop steward and the Project manager will discuss the matter with a view to resolving the issue within 24 hours.

(d) If resolution is not achieved the matter will be discussed between the union organiser and a senior management representative of the company. Senior management shall be given all reasonable opportunity to resolve any matter of concern.

(e) If matters cannot be resolved in discussions between the parties during these procedures, the issue may be referred to the appropriate Industrial Relations Commission for resolution.

(f) Whilst these procedures are taking place all work will continue without interruption, stoppage or dislocation.

14.3 The unions associated with the project acknowledge this Project Agreement and having signed the agreement are committed to the successful completion of the project with the minimum possible disruption.

Accordingly the unions and their members commit to the following:

(a) The parties are committed to follow the agreed Dispute Settlement Procedures as set out in this clause.

(b) From time to time meetings will be held with workers on site but will be held at times that will not unduly disrupt site production, for example at the start or end of a shift or with smoko or lunch breaks.

(c) Meetings will not be held without prior notification to senior site management.

15.—DEMARCATION PROCEDURE

15.1 Consultation shall be the primary method of avoiding demarcation disputes. If a dispute does occur, then senior officials of the unions concerned will meet with the aim of reaching a resolution as soon as possible.

15.2 If a demarcation issue cannot be resolved by discussion the parties will seek the assistance of the appropriate Industrial Relations Commission.

15.3 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.

16.—SHIFTWORK

16.1 It is recognised by the parties to this agreement that the project, in order to ensure efficient and productive construction operations, will require shiftwork.

Where the project manager requires shiftwork to be performed, the unions will not place any restrictions or limitations on such shiftwork. Further, all work performed during shiftwork shall be paid in accordance with the provisions of the relevant award, other than the level of shift allowance as provided in this clause.

16.2 With respect to all shift work, (being day shift, afternoon shift and night shift) covered by this agreement, a loading of 25% in addition of the ordinary rate shall apply in lieu of the current loading of 15% (for afternoon shift and night shift) as prescribed by the AWU (Construction and Maintenance) Award 1989.

The provisions of this subclause shall apply on and from 20 November 1995, provided that this agreement is signed by the union covering the particular employees involved.

17.—UTILISATION OF WORK SKILLS

The parties to this agreement are committed to co-operate positively to encourage the best utilisation of workforce skills in construction of this project.

In particular, where members of the unions party to this agreement are required to work in teams, then union demarcation will not prevent co-operation within the team such that the skill of an employee may as required by applied outside of their particular classification. The intention of this provision is not to promote the de-skilling of classifications, but to recognise the occasional need for the cooperative use of skills and competencies held by the workforce.

18.—ROSTERED DAYS OFF

18.1 For both day workers and shift workers the RDO or rostered day off shift shall be taken in accordance with the industry schedule of RDO's. However, by agreement between the employer and employee an alternative day within the four week cycle may be substituted for the scheduled RDO, or rostered off shift, and the award provisions will apply if work occurred on the new RDO, or rostered off shift. If, however, by agreement between the employer and employee, and RDO, or rostered off shift, is not to be taken within the four week cycle relevant overtime rates will apply to work on the RDO, or rostered off shift, and an alternative day off shall be allowed, paid for with accrued entitlements. Provided that not more than 2 RDO's, or rostered off shifts, may be banked before actual time off the job is taken. Such accrued leave shall then be taken within 14 days of the 3rd scheduled RDO, or rostered off shift.

18.2 The arrangements for alternative RDO's, or rostered off shifts, agreed in this procedure shall be taken to meet the particular notice requirements of the award(s).

18.3 Where any employee is requested to re-arrange or vary a rostered day off to ensure the continuity of slipform operations, the employee shall not unreasonably withhold agreement.

18.4 The foregoing provisions shall also apply to the rostered-off shift on shiftwork.

19.—SLIPFORM OPERATIONS

Work on slipforming operations shall be performed on a continuous basis. Therefore, should any interruption of any kind occur to work on the project, it is agreed that all personnel required for slipform operations will continue to perform their duties as required. Where the duration of slipforming exceeds 8 days it is recognised that the provisions of Clause 19(b)(ii) of the AWU (Construction and Maintenance) Award 1989 will not apply, except that the ninth and subsequent shifts shall be paid at double time, as prescribed by the award, until at least one day off work is taken.

Further, where required to ensure continuity of slipform operations, rostered days off, rostered off shift and public holidays will be re-arranged or varied as requested by the project manager to ensure such continuity.

20.—INCLEMENT WEATHER

The parties are committed to ensuring that lost time due to inclement weather is kept to a minimum and that work will only stop when it is agreed under the relevant procedure that it is either not safe or not reasonable for workers exposed thereto to continue working whilst the same prevail.

The relevant procedure for the purposes of this agreement shall be as provided by Clause 38.—Inclement Weather of the AWU (Construction and Maintenance) Award 1989.

Provided however that the following shall also apply:

a) Should a portion of the project only be affected by inclement weather all other employees not so affected shall continue working in accordance with the appropriate award provision.

b) Should a portion of the project be affected by inclement weather, employees can be transferred to another work location on the site not exposed to inclement weather.

c) Recognising that all parties are committed to ensure a safe workplace, it is agreed that the project Manager will not be restricted in taking all reasonable measures to ensure work can continue during periods of inclement weather in a safe and reasonable manner.

21.—SAFETY

It is agreed that the parties will co-operate to ensure a safe work environment on the project. A site safety plan will be adopted in accordance with the Halliwell Safety Order at the commencement of the project. Union representative undertake to assist in the identification of potential work hazards prior to the commencement of constriction so that these if possible, can be dealt with at the design stage, or acceptable procedures are developed to deal with the risk to health and safety.

22.—HOURS

The hours to be worked on the project will be generally as follows:

Monday—Friday 9-10 hours per day

Saturday	5 hours per Saturday or 9-10 hours on alternate Saturdays
Night Shift	As required with similar hours to day shift
Slipforms	All slip construction will be on a continuous basis of 24 hours per day until completion of the particular slip. Worked over an appropriate shift work cycle.

23.—FARES, TRAVEL AND LIVING AWAY FROM HOME PROVISIONS

23.1 There will be no provision of camp accommodation on this project, however the provisions of the relevant awards in relation to living away from home allowance shall apply.

23.2 The amount of living away from home allowance applicable to work on this project shall be the amount prescribed from time to time by the AWU (Construction & Maintenance) Award 1989. In addition, the daily travel of $11.30 will apply.

23.3 An employee who is not in receipt of living away from home allowance and is not provided with transport by his/her employer to travel to and from the job, shall be paid an allowance as follows, which shall be paid in lieu of allowances provided for fares and travel in the relevant awards.

Employees who travel from a point

	Per Day
(1) Up to 35km Radial distance from the job site	$11.30
(2) More than 35km to 70km radial distance from the job site	$22.00
(3) Over 70km radial distance from the job site	$33.00

23.4 Any employee who resides outside the 70km radial distance from the job and is required to travel an excessive amount of time to and from the job and home shall, by mutual agreement, be taken not to be able to reasonably return to their usual place of residence each night.

Taking into account the particular circumstances of this project, a period of travel time of more than one hour, under ordinary travel conditions one way, will be considered excessive for the purposes of this Clause.

This provision shall not apply however, without the specific agreement of Leighton Contractors Pty Ltd, who will not unreasonably withhold such agreement.

24.—SUPERANNUATION

Contributions will be made by the contractor at the rate of forty dollars ($40) per week on behalf of relevant employees to an appropriate superannuation scheme which meets approved standards.

25.—REDUNDANCY

In lieu of the weekly amounts prescribed in the Awards covered by this Agreement for work on this project, redundancy payments shall be made on the basis of $40.00 per week for each completed week of service on the site.

26.—CRIB AND MEAL TIMES/ALLOWANCE/ OVERTIME BREAKS

The provisions of the relevant awards shall apply and as provided these matters shall be agreed at site level.

27.—PROTECTIVE CLOTHING

27.1 Safety Boots

Each employee on commencing employment on site shall be provided with one pair of safety boots free of charge.

These boots will be replaced on a fair wear and tear basis, provided that any relevant award does not provide an allowance for the ongoing provision and maintenance of safety footwear.

27.2 Each employee employed on site between April 1995 to October 1995 shall be entitled to one bluey jacket free of charge.

27.3 Protective clothing as required to meet the obligations of the Occupational Health Safety and Welfare Act shall be provided.

28.—SHOP STEWARDS FACILITIES

Leighton Contractors will make available to shop stewards an office which will have a telephone facility and shop stewards will have access to the company facsimile machine.

Parties to the Leighton Contractors Pty Limited Agreement 1995 for construction of the Wandoo Concrete Gravity Structure.

Signed:	Signed	Name: EE YOUNG
Date:	14/12/95	
for	LEIGHTON CONTRACTORS PTY LTD	
Witnessed	Signed	Name: J.J. DUNKLEY
Date:	14/12/95	
Signed:	.....	Name:
Date:	../../..	
for	AUSTRALIAN WORKERS UNION	
Witnessed	.....	Name: .....
Date:	../../..	
Signed:	Signed	Name: JOHN SHARP-COLLETT SECRETARY
Date:	20/02/96	
for	AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS	
Witnessed	Signed	Name: G. STURMAN
Date:	20/02/96	
Signed:	Signed	Name: PETER CARTER
Date:	27/02/96	
for	AUSTRALIAN ELECTRICAL, ELECTRONICS, FOUNDRY AND ENGINEERING WORKERS UNION	
Witnessed	Signed	Name: T. DOBSON
Date:	27/02/96	
Signed:	.....	Name:
Date:	../../..	
for	CONSTRUCTION, FORESTRY AND MINING EMPLOYEES UNION OF AUSTRALIA	
Witnessed	.....	Name: .....
Date:	../../..	
Signed:	.....	Name: J. McGIVERON
Date:	13/02/96	
for	TRANSPORT WORKERS UNION OF AUSTRALIA	
Witnessed	.....	Name: JOHN CAIN
Date:	13/02/96	

APPENDIX A

CONCRETE GRAVITY STRUCTURE LOG OF CLAIMS

1. Site Allowance $4.50 All Purpose (back-dated to start of project).

2. All Special Rates and Penalties to apply, eg. Confined Space, Wet Underfoot.

3. Calculation for Height Allowance to be from Blinding at Ground level not O Daturn.

4. 50% Loading to apply to all three shifts. When shift work is carried out.

5. Redundancy to be as per "Oil & Gas Industry" ($150 per week).

6. Productivity Payment of $25 per week to remain.

7. Workers not receiving LAFHA and not residing in Bunbury area (ie. Bunbury Australind and Gelorup) to receive an additional payment per kilomtere as per Award.

8. C+BUS payment paid monthly, not quarterly.

9. Accumulated Sick Leave to be paid on termination.

10. Optional 3.30pm finish on Fridays.

11. Banking facilities to be available on site.

12. Ice machine to be installed on site.

13. Each long weekend (ie. RDO's and Public Holidays) all workers on site to be paid equivalent of return airfare to Perth. Journey Cover to apply when travelling to and from home.

14. More general labourers (TA's) to be employed on site.

15. Two pairs of Work Clothing to be issued and replaced on a fair wear and tear basis.

16. Evacuation Procedure for site to be improved and improved access and egress (eg. stairs) to be provided.

17. On site canteen to be provided immediately.

18. Wage Increase to apply, as per General Industry Claim 15%.

19. Negotiations on these claims to be completed by Thursday, 7 September, 1995.

LIBRARY AND INFORMATION SERVICE OF WESTERN AUSTRALIA (LISWA) ENTERPRISE BARGAINING AGREEMENT 1996
No. PSA AG 2 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Library Board of Western Australia

and

The Civil Service Association of Western Australia (Incorporated) and Others.

No. PSG AG 2 of 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R. H. GIFFORD.

28 May 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSG AG 2 of 1996

HAVING heard Ms C. Baetge on behalf of the Applicant and Mr R. O'Byrne on behalf of the Civil Service Association of Western Australia (Incorporated) and the Shop, Distributive and Allied Employees' Association of Western Australia, and Mr D. Kelly on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, 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 Library and Information Service of Western Australia (LISWA) Enterprise Bargaining Agreement 1996, No. PSG AG 2 of 1996, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

CONTENTS

SECTION 1: TITLE AND CONTEXT OF THE AGREEMENT
Title
LISWA Mission Statement
Objectives of the Agreement
Workplace Philosophy
Commitment and Facilitation
Managing Significant Workplace Change

SECTION 2: AGREEMENT DETAILS
Definitions
Parties to the Agreement
Scope of the Agreement
Number of Employees Covered
Single Bargaining Unit
Relationship to Parent Awards
Date and Period of Operation of the Agreement
Salary Increases
Availability of Agreement
Audit of 4% Second Tier and 1989 SEP
Agreement Dispute Settlement Procedure

SECTION 3: TEAM STRUCTURE
Team Characteristics
Production of Work Team Plans

SECTION 4: PRODUCTIVITY IMPROVEMENTS AND BENEFITS
Productivity Initiatives
Productivity in Excess of Target
Continuous Improvement Strategy
Skills Development and Training
Performance Management
Safety and Wellness
Consultation
Productivity Measurement

SECTION 5: CONDITIONS OF EMPLOYMENT
Flexibility of Working Hours
Casual Employment
Special Personal Leave
Parental Leave

SECTION 6: EMPLOYEE GRIEVANCE PROCEDURE
Employee Grievance Procedures

SECTION 7: UNION FACILITIES AND ACCESS
Union Facilities and Access

SECTION 8: SIGNATURES OF PARTIES TO THE AGREEMENT
Signatures of Parties to the Agreement

SCHEDULE 1
Relevant Awards to this Agreement

SCHEDULE 2
Salaries Schedule

SCHEDULE 3
Productivity Improvement Plan

SECTION 1: TITLE AND CONTEXT OF THE AGREEMENT

1. TITLE

This Agreement shall be known as the Library and Information Service of Western Australia (LISWA) Enterprise Bargaining Agreement 1996.

2. LISWA's MISSION STATEMENT

To provide and promote equitable access to information resources and services, which support the intellectual, economic, cultural, social and recreational needs of the people of Western Australia.

This Agreement is an important component of a broader strategic process by which the Library and Information Service of Western Australia shall confirm and satisfy the needs and expectations of its clients and provide a stimulating, cooperative and supportive working environment for its employees.

3. OBJECTIVES OF THE AGREEMENT

The objectives of this Agreement are:

3.1 To gain employee and management commitment and contribution to the short term and long term direction of LISWA.

3.2 To gain employee and management endorsement and commitment for the implementation of measures that will improve efficiency and effectiveness within LISWA.

3.3 To ensure that gains made are shared equitably between the Library Board of Western Australia, its employees and the Government on behalf of the Western Australian community.

3.4 To ensure that the needs of LISWA's clients are met through the delivery of reliable, efficient and competitive services.

3.5 To promote the development of trust and motivation and to continue to foster enhanced employee relations.

3.6 To facilitate greater flexibility in decision making and allocation of human and other resources.

3.7 To promote increased satisfaction from jobs and broaden career opportunities for employees.

3.8 To develop and pursue changes on a continuing basis by using consultative and participative practices.

3.9 To promote health, safety, welfare and equal opportunity for all employees.

4. WORKPLACE PHILOSOPHY

The following statements represent the beliefs which establish the parameters and principles for LISWA's Enterprise Agreement.

4.1 Team based structures represent the most efficient and effective way of working within LISWA. Teams focus attention on outputs and outcomes. Team development will be encouraged and rewarded.

4.2 Flexibility in the way work is organised and undertaken is paramount to achieving high quality service delivery. Work practices will be continually reassessed in the light of customer needs, operational requirements and business efficiency.

4.3 Creative, innovative, skilled and flexible employees are the most important means of serving our clients well. Job training needs, skill development and quality of work life will be continuously addressed.

5. COMMITMENT AND FACILITATION

The parties enter into this agreement in good faith with a commitment to work together to achieve the objectives and planned productivity improvements and to pave the way for further benefits to clients, employees, and the Government on behalf of the community.

Following the commencement of this agreement, the Enterprise Bargaining Negotiating Committee will:

* continuously monitor its implementation
* meet quarterly in the months of January, April, July and October to assess the value achieved from productivity improvements and consider the implications of such assessments in relation to Clause 2 of Section 4
* meet within a month of any party giving notice to another of concerns that implementation of the agreement is giving rise to unforseen and undesirable consequences.

Whilst supporting the move to team based ways of working, the parties acknowledge the potential for change to create stress and agree to work together, through the EBNC, to attempt to find solutions if any employees become unsettled by the process.

6. MANAGING SIGNIFICANT WORKPLACE CHANGE

Where the employer contemplates the introduction of major changes in program, organisation, structure or technology that are likely to have a significant effect on an employee or a group of employees, or is likely to entail terminations by way of a redundancy, the employer shall consult the employees and the relevant union as soon as possible on:

a) The proposed changes;

b) The expected effects of the changes on employees;

c) The measures for averting or mitigating the adverse affects of such changes on employees;

d) Any other matters likely to affect employees.

Significant effect includes, but is not limited to:

a) Termination of employment;

b) Major changes to either the composition of the workforce or the operations carried out within the workplace;

c) Significant changes in the skills required of the employer's workforce;

d) The elimination or diminution of job opportunities and/or promotion opportunities;

e) The need for retraining or transfer of employees to other work or locations;

f) Restructuring of jobs.

SECTION 2: AGREEMENT DETAILS

1. DEFINITIONS

In this Agreement, the following expressions shall have the following meaning:

"LISWA" means the Library and Information Service of Western Australia.

"Chief Executive Officer" means the Chief Executive Officer of the Library and Information Service of Western Australia, or the person acting as Chief Executive Officer or person having the delegated authority of the Chief Executive Officer.

"Cost Centre Manager" means an officer appointed to one of the following positions which is directly responsible and accountable to the Chief Executive Officer of LISWA:

Director J.S. Battye Library
Director Public Library Services
Director Public Records Office
Director State Reference Library
Director Corporate Support and Development
Manager Bibliographic Services
Manager Community Relations
Manager Document Delivery Services
Manager Finance and Building Services
Manager Human Resources
Manager Information Systems
Business Manager
Manager Preservation Services

—and such other positions as may be designated as Cost Centre Managers by the Chief Executive Officer from time to time.

"Employer" means the Library Board of Western Australia.

"Employee" for the purposes of this Agreement means someone who is referred to at Clause 3.—Scope of this Section.

"EBNC" means the Enterprise Bargaining Negotiating Committee referred to at Clause 4.2—Single Bargaining Unit of this Section, and shall comprise three management representatives, three employee representatives, and relevant union representatives.

"Government" means the State Government of Western Australia.

"Minister" means the Minister or Ministers of the Crown responsible for the administration of the Arts.

"Unions" means the unions and associations listed as parties to this Agreement in Clause 2—Parties to the Agreement of this Section.

"WAIRC" means the Western Australian Industrial Relations Commission.

"Workplace Delegate" means an employee elected from the financial membership of the relevant union who is charged with the duties and responsibilities as detailed by those rules applicable to the relevant union.

"Deputy Workplace Delegate" means an employee elected from the financial membership of the relevant union who is charged, in the absence of the Workplace Delegate, with the same duties and responsibilities of the Workplace Delegate.

2. PARTIES TO THE AGREEMENT

This Agreement is binding upon those parties who are signatories to this Agreement as follows:

The Library Board of Western Australia

The Civil Service Association of Western Australia (Incorporated)

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

The Shop, Distributive and Allied Employees' Association of Western Australia

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

3. SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all employees of the Library Board of Western Australia, including Senior Executive Service employees working in LISWA, who are members of or eligible to be members of the Associations/Unions party to this Agreement.

4. NUMBER OF EMPLOYEES COVERED

The number of employees covered by this Agreement is approximately 270.

5. SINGLE BARGAINING UNIT

5.1 This Agreement has been negotiated through a Single Bargaining Unit.

5.2 The Single Bargaining Unit parties have established an Enterprise Bargaining Negotiating Committee responsible for negotiating and monitoring the implementation of an Enterprise Agreement for the Library Board of Western Australia.

5.3 This Agreement has been presented to employees of the Library Board of Western Australia who have endorsed it.

6. RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the relevant Awards listed in Schedule 1 of this Agreement, which apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

7. DATE AND PERIOD OF OPERATION OF THE AGREEMENT

7.1 This Agreement shall operate from the date on which this Agreement is registered in the Western Australian Industrial Relations Commission (WAIRC) and shall remain in operation for a term of 18 months from the date of registration.

7.2 The Enterprise Bargaining Negotiating Committee (EBNC) will review this Agreement and commence negotiations for a new Agreement no later than six months prior to its expiration.

7.3 The EBNC will assess achievements in performance, productivity and efficiency during the term of this Agreement.

7.4 The pay quantum achieved as a result of this Agreement will remain and form the new base pay rate for future Agreements or continue to apply in the absence of a further agreement, except where the Award rate is higher, in which case the Award shall apply.

7.5 The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

8. SALARY INCREASES

8.1 The salary increases detailed in this Agreement are payable on the basis of implementation and continued co-operation of those improvements in the productivity and work practice changes outlined in the Productivity Improvement Plan at Schedule 3 and Section 4 of this Agreement.

8.2 The following increases will be payable on the award rate during the life of this Agreement as reflected in Schedule 2: Salaries.

a) A flat increase of $689.00 from 1 January 1996, or no more than 6 per cent;

b) An increase of 6% from 1 July 1996.

and a further increase of 1% on the salaries applicable under this Agreement shall be paid on 1 January 1997.

9. AVAILABILITY OF AGREEMENT

A copy of this Agreement shall be kept in an easily accessible place on each floor of the Alexander Library Building and be available for inspection from Human Resource Services upon request by any employee of the Library Board of Western Australia.

10. AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous Industrial Agreements or Award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11. AGREEMENT DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this Industrial Agreement, will be dealt with in accordance with the following procedures:

11.1 The employee(s) and/or a union representative concerned shall discuss the matter with the Team Leader or Cost Centre Manager and the Manager Human Resources in the first instance. An employee may be accompanied by a union representative.

11.2 If the matter is not resolved within 5 working days following the discussion in accordance with subclause (11.1) hereof, the matter shall be referred by the union representative to the Chief Executive Officer or her/his nominee for resolution.

11.3 If the matter is not resolved within 5 working days of the union representative's notification of the dispute to the Chief Executive Officer, it may be referred by either party to the Western Australian Industrial Relations Commission.

SECTION 3: TEAM STRUCTURE

In pursuit of the objectives outlined in this Agreement, the parties are committed to the development of a team based structure with a focus on quality client service and continuous improvement processes, which contribute to the achievement of program and organisational objectives.

For employees, this means becoming involved in the implementation of LISWA's operational plan, developing open communication with team leaders and team members, and accepting personal responsibility for their own and their team's performance.

1. TEAM CHARACTERISTICS

An effective team has the following characteristics:

1.1 The team is committed to achieving the highest standard of service delivery to clients, be they internal or external.

1.2 Staff Focussed

Team members will treat each other with courtesy, consideration and respect, and will strive to practice the following work behaviours:

- Act with honesty and integrity;
- Make consultative decisions;
- Strive to be the best through continuous improvement;
- Encourage innovation and creativity;
- Exhibit team pride;
- Deal with official information responsibly and appropriately;
- Take personal responsibility for skills development and maintenance.

1.3 Good Communication

Communication is open within the team and across teams. Information is shared and decisions can be challenged and explained in a non-threatening environment.

Team Leaders and Cost Centre Managers will take the time to explain decisions to relevant employees.

2. PRODUCTION OF WORK TEAM PLANS

2.1 Each team shall be organised to achieve clear objectives and outcomes which contribute to the achievement of program objectives and LISWA's client service goals.

2.2 Work teams shall prepare written plans in conjunction with their relevant Cost Centre Manager, the major elements of which shall be the work teams' agreed service outputs. Work team plans shall also document:

- The Performance indicators to be used in measuring work team outputs and achievements;
- The responsibility and accountability required to manage the team resources and monitor and deliver client services;
- Identified changes to work practices;
- Skill development required by team members; and
- Methods for ensuring effective communication both within the work team and with other work teams, and with internal and external clients.

2.3 Team plans will be submitted to and approved by the Chief Executive Officer to ensure consistent standards in performance evaluation and outcomes.

2.4 Work team plans will be formally reviewed and outcomes reported to the relevant Cost Centre Manager.

SECTION 4: PRODUCTIVITY IMPROVEMENTS AND BENEFITS

1. PRODUCTIVITY INITIATIVES

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery for LISWA.

The parties agree to develop and implement the following productivity improvements as detailed in Schedule 3—Productivity Improvement Plan.

Management Restructure and Team Ways of Working.

Project Information Access: Improving services and efficiency through computerisation.

Processing Public Library Stock to Improve Efficiency.

Centralised Purchasing Efficiencies.

Outsourcing Photocopiers.

Provision of Financial Bureau Services to Arts Portfolio.

Computerisation of Consignment Lists.

Selective Repairing of Stock.

Rationalisation of Distribution of New Stock to Public Libraries.

Battye Library Productivity Gains.

The outcomes to be achieved during the term of this Agreement are:

Extended Opening Hours of State Reference and Battye Libraries to suite public needs.

The Leonardo Project: Putting interactive multimedia to work for the benefit of clients.

Centre for the Book: Involving the community in books and ideas.

The LISWA Foundation: Raising money from business and the community.

Public Records Search Room: Improving client services.

Reduction in backlogs in cataloguing, indexing and database creation to assist clients find their own materials.

Aboriginal Services Liaison Officer (Public Library Services): Taking public libraries to aboriginal communities.

Government Libraries Consultancy Services: A whole of government approach.

2. PRODUCTIVITY IN EXCESS OF TARGET

During the life of this Agreement, the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. In particular, the parties will analyse any increased productivity resulting from:

a) Client focus;

b) Fee Based Service Program; and

c) Any additional increases realised from Project Information Access.

The parties will assign a value to any improvements realised.

The parties agree that should productivity initiatives listed in this Agreement or added by mutual consent during the term of the Agreement generate savings in excess of the projected value of $1,805,308 as detailed in Schedule 3: Productivity Improvement Plan, a minimum of 50% of the difference between the projected value and the actual value of the productivity improvements will be reserved for payment of additional benefits to employees which, by agreement of the parties, may be either:

a) by payment of lump sum bonuses at the expiration of this Agreement; or

b) by supplementation of benefits in a subsequent agreement; or

c) by some other agreed method.

3. CONTINUOUS IMPROVEMENT STRATEGY

It is agreed that there will be full support and involvement to the ongoing process of continuous improvement.

This strategy is targeted to support LISWA's mission and objectives.

A fundamental ingredient in the achievement of this strategy is the involvement of all LISWA employees in its development and implementation. The consultative mechanisms and the education process will be critical to this process.

The process of continuous improvement will be progressively implemented within LISWA. The parties agree to promote the involvement of all employees in continuously improving their workplaces and to actively work to remove barriers to its implementation.

In particular, the parties agree to focus on the following issues:

3.1 Customer focus

- Building customer requirements into the design of new products, services or processes.
- Ensuring that all employees understand that organisational success comes from satisfying internal and external client requirements.
- Improving communication with customers.

3.2 Leadership and Behaviour

All employees—

- Having a shared vision of the future.
- Focusing on achieving the long term aims of the organisation whilst continually satisfying short term requirements.
- Demonstrating ethical and best behaviours by example.
- "Coaching" and not "judging" behaviour.
- Eliminating fear and developing trust among all employees.

3.3 Involvement of People

- Systematically involving all employees through team work.
- Ensuring communication is open, effective and two-way, with clear concise guidance.
- Empowering employees at all levels to be involved in making decisions in their workplace wherever possible.
- Providing employees with necessary training to assist employees to undertake continuous workplace improvement.

- Understanding and acceptance by all employees that everyone is responsible for the quality of their work.

3.4 Acting on Facts and Knowledge

- Making decisions on the basis of accurate information, data and knowledge.
- Developing effective and efficient processes to solve problems and improve quality.
- Ensuring that all employees understand their responsibilities, how to measure their effectiveness and how to target improvement.
- Collecting data that is informative and relevant, so that it can be interpreted correctly.

3.5 Emphasis on Process and Systems

- Participating in cross functional improvement activities.
- Ensuring that the processes are documented, controlled and constantly improved.
- Involving external suppliers as partners in the quality improvement process.

3.6 Emphasis on Continuous Learning

- Treating mistakes and problems as opportunities to learn and improve.
- Standardising gains and communicating improvements to other areas of the organisation that might also learn from them.

3.7 Structure for Continuous Improvement

- Developing a framework to enable employees to submit ideas, obtain decisions and receive feedback on their ideas.
- Develop appropriate organisational structures to support the process of continuous improvement.
- Recognising and rewarding employees' efforts and achievements through gainsharing and LISWA's recognition scheme.

In addition, LISWA is committed to providing a safe working environment and encouraging the development of creative, innovative, skilled and flexible employees, by way of:

4. SKILLS DEVELOPMENT AND TRAINING

The parties to this Agreement are committed to supporting the skills development of all employees through continuous learning and the provision of development opportunities. Skills development activities shall have a focus relevant to LISWA's organisational objectives and work team requirements.

To facilitate this, the parties to this Agreement are committed to the implementation of a Skills Development Strategy, before the expiration of this Agreement. It is expected that the Skills Development Strategy will reflect the objectives and aims of this Agreement.

5. PERFORMANCE MANAGEMENT

The parties to this Agreement are committed to introducing an appropriate performance management system for all employees with the aim of identifying agreed outcomes relevant to individual and team performance, training and development to achieve organisational objectives and appropriate work behaviours.

6. SAFETY AND WELLNESS

The parties are committed to promoting a workplace where both management and employees take responsibility for occupational health, safety and welfare in work processes and practices.

During 1995, a Risk Management Improvement Plan was established to improve the management of occupational health and safety risks at LISWA. Working parties consisting of management, union and employee representatives, will be responsible for implementing and monitoring agreed initiatives in the Risk Management Improvement Plan.

Cost savings as a direct result of the implementation of safe work practices will be monitored with the view of sharing any cost savings resulting from the implementation of the plan between LISWA and its employees.

7. CONSULTATION

The parties are committed to working together to improve the business performance and working environment of LISWA. Whilst it is acknowledged by the parties that decisions will continue to be made by LISWA, which is responsible and accountable to Government by statute for the efficient and effective operation of its business, the parties are committed to effective communication and agree, in particular, that:

7.1 Where LISWA proposes to make changes likely to affect existing practices, working conditions or employment prospects of employees, the relevant union and the staff affected shall be notified by LISWA as early as possible.

7.2 Consultation with employees and the union parties to the agreement on proposed changes to work organisation shall occur prior to final decisions being made.

7.3 Employees will be involved in contributing to the efficiency and effectiveness of their work teams within policies and guidelines.

7.4 In the context of this clause consultation shall mean information sharing and discussion on matters relevant to the decision making processes which shall be conducted in such a way as to enable the parties to contribute to the decision making process.

8. PRODUCTIVITY MEASUREMENT

8.1 The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of LISWA to management, employees and other relevant stakeholders.

8.2 The parties agree to assess organisational performance according to the extent to which the objectives of LISWA are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, LISWA and the Government on behalf of the community.

8.3 The performance indicators in the Productivity Plan have been agreed by the parties and will be used to assess progress in the performance of key elements of the Agreement.

8.4 Measurement of LISWA's levels of performance will continue to be undertaken through the use of performance indicators.

8.5 It is agreed that the employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

8.6 The parties agree that the value of the initiatives included in this Agreement and assessed through the application of performance indicators is 7 per cent.

8.7 Methods will be developed to assign values to future productivity improvements which are identified in LISWA.

8.8 The value of the productivity improvements will be shared between LISWA and its employees. The employees' share shall be no less than 50 per cent and the balance shall be retained by LISWA, which shall incorporate the return to Government on behalf of the community.

SECTION 5: CONDITIONS OF EMPLOYMENT

1. FLEXIBILITY OF WORKING HOURS

Subject to the needs of clients and other employees, Cost Centre Managers and Team Leaders shall have the discretion to allow employees to use credited flexitime hours to be absent from work during the core hours defined in Clause 16 (7)(c)—Hours of the GOSAC Award.

2. CASUAL EMPLOYMENT

The parties to this Agreement agree to investigate the employment of casual officers within LISWA, and if appropriate converting casual officers to permanent part-time employment.

3. SPECIAL PERSONAL LEAVE

3.1 An employee, other than a casual employee, may use up to five (5) days per annum of accumulated sick leave for such reasons as:

- Caring for a sick family member or friend;
- Urgent personal business which requires an absence from work;
- Personal emergencies; and
- As a supplement to Short Leave.

3.2 Only sick leave accumulated prior to the current year's entitlement may be used for the purposes of this Special Personal Leave.

3.3 In making application for Special Personal Leave the employee shall, wherever practicable, give the employer notice of their absence, the reasons for taking such leave and the estimated length of absence.

3.4 Special Personal Leave is not available to an employee during periods of other leave.

3.5 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

3.6 Leave taken under this provision is deemed to be sick leave.

4. PARENTAL LEAVE

4.1 Definition

"Employee" includes full time, part-time, permanent and fixed term contract employees.

"Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

"Parental Leave" is unpaid leave.

4.2 Eligibility for Parental Leave

a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

b) An employee who is employed under a fixed term contract shall not be granted parental leave beyond the period of employment stated in the contract of employment.

c) Where the employee applying for the leave is the partner of a pregnant spouse, one weeks leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

d) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

f) Subject to sub-clause (b) of this clause where both partners are employed by the Library Board the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive Officer.

4.3 Other Leave Entitlements

a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive Officer's approval.

c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

4.4 Notice and Variation

a) The employee shall give not less than four weeks notice in writing to the Cost Centre Manager of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

b) An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

4.5 Transfer to Safe Job

a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary by a registered medical practitioner.

4.6 Replacement Employee

a) Prior to engaging a replacement employee the Cost Centre Manager shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

b) Should an officer apply for leave which is in total more than 12 months, the Chief Executive Officer may advertise and fill the officer's substantive job on a permanent basis.

4.7 Return to Work

a) An employee shall confirm the intention to return to work by notice in writing to the Cost Centre Manager not less than four weeks prior to the expiration of the period of parental leave.

b) An employee on return from parental leave may be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause 4.5 hereof the employee may be entitled to return to the position occupied immediately prior to the transfer.

c) An officer who makes application for leave which will, with parental leave, total more than 12 months, shall be advised in writing before the leave is approved, that the substantive job may be advertised and filled in the employee's absence.

d) An officer whose substantive job has been filled in accordance with (c) of this sub-clause may, on return to duty, be allocated to an alternative substantive position within LISWA

at the existing classification and having regard to the employee's skills, qualifications and abilities.

e) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant award.

f) Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

4.8 Effect of Leave on Employment Contract

a) Continuous Service

Absence on parental 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 under the relevant award or this agreement.

b) Termination of Employment

An employee on parental leave may terminate employment at any time during the period by written notice in accordance with the relevant award.

SECTION 6: EMPLOYEE GRIEVANCE PROCEDURE

When an employee has a grievance, the matter shall be acted on in accordance with the provisions of this clause.

While these grievance procedures are taking place, existing working arrangements shall continue. In order to allow for the peaceful resolution of grievances, the parties shall be committed to avoid stoppages of work, or any other bans or limitations on their performance while the procedures of negotiation and conciliation are being followed.

Where a matter is raised by an employee, a group of employees, or a union representative, the following steps shall be observed:

1. The employee(s) concerned shall discuss the matter with their immediate Team Leader. If the matter cannot be resolved at this level, the Team Leader shall, within three (3) working days, refer the matter to the Cost Centre Manager.
2. The Cost Centre Manager shall take all possible steps to resolve the matter within three (3) working days.
3. If still unresolved, the matter shall be referred to the Manager, Human Resources, and resolved, if possible, within three (3) working days.

The period for resolving a dispute at any stage may be extended by agreement between the parties, if it proves to be impracticable or unreasonable to resolve the matter in the timeframe indicated above.

The employee(s) may nominate to be accompanied by their union representative, or any other person, at any of the stages referred to above.

Should the matter remain in dispute after the above processes have been exhausted, a party may refer the matter to the Western Australian Industrial Relations Commission.

SECTION 7: UNION FACILITIES AND ACCESS

1. LISWA recognises and supports the rights of unions to organise and represent their members. Constructive and consultative industrial relations are important for economic development and increased organisational productivity and rely on co-operation between the industrial partners based on mutual recognition and respect.

2. Role and Responsibilities of Workplace Delegates

As representatives of the union, Workplace Delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a Workplace Delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

A Workplace Delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

3. Workplace Delegates—Role in respect to other Authorised Employee Representatives

Where there are agreed procedures designed to deal with specific issues, such as Equal Employment Opportunity and Occupational Health, Safety and Welfare, for which legitimate authorised and trained representatives have been appointed, a Workplace Delegate will refer any such issues arising to the appropriate representatives.

4. The Agency's Role and Responsibilities

LISWA recognises appointed/elected Workplace Delegates and will provide co-operation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

5. The parties agree to adopt the definition of a workplace, as defined in the Occupational Health, Safety and Welfare Act 1984, as "a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work, or are likely to be in the course of their work".

6. Following the election or appointment of a Workplace Delegate, the union will advise LISWA in writing of such election or appointment. The Workplace Delegate will be issued with written credentials by the union authorising them to act as a Workplace Delegate in accordance with the provisions of this clause.

7. LISWA shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a Workplace Delegate. In recognising Workplace Delegates, LISWA acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

8. LISWA and Workplace Delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of LISWA.

9. Workplace Delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a Delegate. LISWA recognises that Workplace Delegates will not be threatened or disadvantaged in any way as a result of their role as Workplace Delegates.

10. Workplace Delegates shall be granted reasonable access to facilities required for the purpose of carrying out their duties. Facilities may include, but not be limited to, access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and word processing facilities. Such access to facilities shall be negotiated within the Branch and shall not unreasonably be withheld or affect the operation of LISWA.

11. Workplace Delegates shall have the right to display union material at the workplace on a notice board provided by LISWA.

12. On request, Delegates shall be provided with the names and locations of new employees. It is recognised that such information is necessary to permit execution of the duties of Workplace Delegates.

13. The duly authorised official of the union shall on reasonable notification to the employer have access to the workplace during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement, the legitimate business of the union, or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way interfere with the work of employees.

14. Any dispute concerning the interpretation of this clause should be resolved within LISWA, where possible, however, this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

SECTION 8: SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed for and on behalf of the Library Board of Western Australia by:

Lynn Allen — Lyn Allen
Chief Executive Officer

Date: 14 March 1996

Signed for and on behalf of the Community and Public Sector Union/ Civil Service Association of Western Australia (Incorporated) Branch by:

Dave Robinson — D. Robinson
Branch Secretary

Date: 27 March 1996

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

Helen Creed — Helen Creed
State Secretary

Date: 21 March 1996

Signed for and on behalf of the Shop, Distributive and Allied Employees' Association of Western Australia

Mark Bishop — M. Bishop
General Secretary

Date: 25 March 1996

Signed for and on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

Jim McGiveron — J. McGiveron
Branch Secretary

Date: 20 March 1996

SCHEDULE 1

RELEVANT AWARDS TO THIS AGREEMENT

1. Government Officers' Salaries, Allowances and Conditions Award 1989. Union respondent is the Civil Service Association of Western Australia (Inc.) (CSA).

2. Western Australian Public Sector (Civil Service Association) Enterprise Bargaining Framework Agreement 1995.

3. Cultural Centre Award 1987. Union respondent is the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch (ALHMWU).

4. Miscellaneous Government Conditions and Allowances Award 1992. This Award is to be read in conjunction with the Cultural Centre Award.

5. Transport Workers' (Government) Award 1952. Union respondent is Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch (TWU).

6. Storemen (Government) Consolidated Award 1979. Union respondent is The Shop, Distributive and Allied Employees' Association of Western Australia (SDA).

SCHEDULE 2

SALARIES

	Award	1/1/96 + $689 flat rate for 6 months/ or 6%	1/7/96 6%	1/1/97 6% + 1%
GOSAC Award				
Under 17 years	10,873.00	11,525.38	11,525.38	11,640.63
17 years	12,707.00	13,469.42	13,469.42	13,604.11
18 years	14,822.00	15,711.32	15,711.32	15,868.43
19 years	17,157.00	18,186.42	18,186.42	18,368.28
20 years	19,267.00	20,423.02	20,423.02	20,627.25
21 years or 1st year of adult service	21,165.00	22,434.90	22,434.90	22,659.25
22 years or 2nd year of adult service	21,817.00	23,126.02	23,126.02	23,357.28
23 years or 3rd year of adult service	22,468.00	23,816.08	23,816.08	24,054.24
24 years or 4th year of adult service	23,115.00	24,493.00	24,501.90	24,746.92
25years or 5th year of adult service	23,766.00	25,144.00	25,191.96	25,443.88
26 years or 6th year of adult service	24,417.00	25,795.00	25,882.02	26,140.84
27 years or 7th year of adult service	25,166.00	26,544.00	26,675.96	26,942.72
28 years or 8th year of adult service	25,684.00	27,062.00	27,225.04	27,497.29
29 years or 9th year of adult service	26,450.00	27,828.00	28,037.00	28,317.37
Level 2				
1st year	27,367.00	28,745.00	29,009.02	29,299.11
2nd year	28,070.00	29,448.00	29,754.20	30,051.74
3rd year	28,809.00	30,187.00	30,537.54	30,842.92
4th year	29,590.00	30,968.00	31,365.40	31,679.05
5th year	30,407.00	31,785.00	32,231.42	32,553.73
Level 3				
1st year	31,530.00	32,908.00	33,421.80	33,756.02
2nd year	32,405.00	33,783.00	34,349.30	34,692.79
3rd year	33,307.00	34,685.00	35,305.42	35,658.47
4th year	34,233.00	35,611.00	36,286.98	36,649.85
Level 2/4 Librarians				
1st year	27,367.00	28,745.00	29,009.02	29,299.11
2nd year	28,809.00	30,187.00	30,537.54	30,842.92
3rd year	30,407.00	31,785.00	32,231.42	32,553.73
4th year	32,405.00	33,783.00	34,349.30	34,692.79
5th year	35,503.00	36,881.00	37,633.18	38,009.51
6th year	37,522.00	38,900.00	39,773.32	40,171.05
Level 4				
1st year	35,503.00	36,881.00	37,633.18	38,009.51
2nd year	36,498.00	37,876.00	38,687.88	39,074.76
3rd year	37,522.00	38,900.00	39,773.32	40,171.05
Level 5				
1st year	39,494.00	40,872.00	41,863.64	42,282.28
2nd year	40,827.00	42,205.00	43,276.62	43,709.39
3rd year	42,212.00	43,590.00	44,744.72	45,192.17
4th year	43,649.00	45,027.00	46,267.94	46,730.62
Level 6				
1st year	45,960.00	47,338.00	48,717.60	49,204.78
2nd year	47,531.00	48,909.00	50,382.86	50,886.69
3rd year	49,157.00	50,535.00	52,106.42	52,627.48
4th year	50,893.00	52,271.00	53,946.58	54,486.05
Level 7				
1st year	53,555.00	54,933.00	56,768.30	57,335.98
2nd year	55,397.00	56,775.00	58,720.82	59,308.03
3rd year	57,401.00	58,779.00	60,845.06	61,453.51
Level 8				
1st year	60,658.00	62,036.00	64,297.48	64,940.45
2nd year	62,991.00	64,369.00	66,770.46	67,438.16
3rd year	65,884.00	67,262.00	69,837.04	70,535.41
Level 9				
1st year	69,497.00	70,875.00	73,666.82	74,403.49
2nd year	71,938.00	73,316.00	76,254.28	77,016.82
3rd year	74,722.00	76,100.00	79,205.32	79,997.37
Class 1	78,932.00	80,310.00	83,667.92	84,504.60
Class 2	83,142.00	84,520.00	88,130.52	89,011.83
Class 3	87,350.00	88,728.00	92,591.00	93,516.91
Class 4	91,560.00	92,938.00	97,053.60	98,024.14

	Award	1/1/96 + $26.41 pw flat increase	1/7/96 6%	1/1/97 6% + 1%
Transport Workers (Government) Award				
Group 2	413.90	438.73	438.73	443.12
After 1 year service	417.60	442.66	442.66	447.08
After 2 years service	421.20	446.47	446.47	450.94
Cultural Centre Award				
Security Officer				
1st yr of employment	410.30	434.92	434.92	439.27
2nd yr of employment	418.70	443.82	443.82	448.26
3rd yr of employment and thereafter	427.10	452.73	452.73	457.26

Storeman (Government Consolidated) Award	Award plus $12.00 pw	1/1/96 + $26.41 pw flat increase	1/7/96 6%	1/1/97 6% + 1%
Storeperson—Level 4				
Grade 1 430.00 pw	442.00	468.41	468.52	473.09
Grade 2 440.00 pw	452.00	478.41	479.12	483.19
Grade 3 450.00 pw	462.00	488.41	489.72	493.29
Storeperson—Level 3				
Grade 1 411.00 pw	423.00	448.38	448.38	452.86
Grade 2 417.00 pw	429.00	454.74	454.74	459.29
Grade 3 423.00 pw	435.00	461.10	461.10	465.71
Storeperson—Level 2				
Grade 1 398.50 pw	410.50	435.13	435.13	439.48
Grade 2 404.50 pw	416.50	441.49	441.49	445.90
Grade 3 410.80 pw	422.80	448.17	448.17	452.65

	Award plus $12.00 pw	1/1/96 + $26.41 pw flat increase	1/7/96 6%	1/1/97 6% + 1%
Storeperson—Level 1				
Grade 1 388.00 pw	400.00	424.00	424.00	428.24
Grade 2 393.00 pw	405.00	429.30	429.30	433.59
Grade 3 398.00 pw	410.00	434.60	434.60	438.95
Under 16 years of age 166.90 pw	178.90	189.63	189.63	191.53
16 to 17 years of age 205.20 pw	217.20	230.23	230.23	232.53
17 to 18 years of age 240.50 pw	252.50	267.65	267.65	270.33
18 to 19 years of age 298.40 pw	310.40	329.02	329.02	332.31
19 to 20 years of age 321.70 pw	333.70	353.72	353.72	357.26
At 20 years of age 357.00 pw	369.00	391.14	391.14	395.05

SCHEDULE 3
PRODUCTIVITY IMPROVEMENT PLAN

The following sections illustrate the major productivity initiatives undertaken by Board staff during 1995 which will realise their major impact during the term of the Enterprise Bargaining Agreement. These are included in the Enterprise Bargaining Agreement as Schedule 3—Productivity Improvement Plan. In addition, staff have identified further changes in work practices which will result in a significant contribution to the continued success of the organisation. Under the terms of both the EBA and the Workplace Agreement staff are required to realise the benefits identified through changes in work practices, especially working as members of teams. Indeed, staff have committed already to working in teams by participating in workshops to design structures and outcomes.

LIBRARY BOARD OF WESTERN AUSTRALIA
PROPOSED ENTERPRISE AND WORKPLACE AGREEMENTS TO COMMENCE 1.1.1996
PRODUCTIVITY COMPONENTS

SUMMARY SHOWING HOW VALUE GENERATED FROM INCREASED PRODUCTIVITY DURING THE PERIOD OF THE AGREEMENT WILL BE USED TO PROVIDE NEW AND IMPROVED SERVICES TO THE PUBLIC

VG	VALUE GENERATED FROM PRODUCTIVITY IMPROVEMENT	Value 18 months
1.	Management restructure	$771,951
2.	Project Information Access	$600,000
3.	Processing Public Library stock	$88,620
4.	Centralised purchasing efficiencies	$78,849
5.	Outsourcing photocopiers #	$32,930
6.	Bureau services for Arts Portfolio	$82,425
7.	Computerising consignment lists	$25,545
8.	Selective repairing of stock	$48,998
9.	Rationalisation of stock distribution	$37,995
10.	Battye Library productivity gains	$37,995
		$1,805,308

VB	VALUE APPLIED TO NEW SERVICES	Cost 18 months
	Team ways of Working (see VG1)	$771,951
1.	Extending library opening hours	$397,565
2.	The Leonardo Project	$110,151
3.	Centre for the Book	$102,090
4.	The LISWA Foundation	$37,995
5.	Public Records Search Room	$25,545
6.	Reduction in cataloguing backlogs	$37,995
7.	Aboriginal Services Liaison Officer	$37,995
8.	Government Libraries Consultant	$85,476
		$1,606,763

Notes:

Further details of the values and costs are provided in other documentation. For a conservative estimate the item marked # has been assumed not to start realising value until 1.7.96.

The difference of $198,545 between value generated and value applied in the above table goes towards the salary increase for staff.

During the 18 month period of the agreement the Board needs to provide $545,145 in cash for salary increases and $397,565 for extending the opening hours. This can be accommodated within the existing forward estimates.

VG1. MANAGEMENT RESTRUCTURE AND TEAM WAYS OF WORKING

Management Restructuring:

In 1994 extensive consultation and research with management and staff resulted in a document: *Reinventing the Organisation*. The plan outlined a change program which will position the organisation "to deliver best practice information services to the people of Western Australia as we move towards the Year 2000". The *Change Agenda* was the first stage in the change programme and this was completed in November 1995. This first phase resulted in the restructuring of the organisation's senior management. Prior to this, there existed a hierarchical structure with a total of 27 management positions, including the CEO (refer Attachment 1).

In 1995, most positions were abolished and a flat organisation structure was introduced. This comprises 15 positions including the CEO (refer Attachment 2). The major thrust of the restructure was the elimination of the hierarchical management structure, a focus on client service delivery and continuous improvement.

The management restructuring was completed in November 1995 and represents a re-allocation of $771,951 over the life of the agreement as 12 management positions have been converted to service delivery positions (refer Attachment 3).

Team Ways of Working:

The next phase of the change agenda is the development of teams and new ways of working. Section 3 of the EBA seeks a commitment to work in teams, with employees taking responsibility for team outcomes, and exhibiting behaviours appropriate to team ways of working. A section on team ways of working has also been incorporated into the WPA.

Teams will be implemented on 1 March 1996 and will be both functional and process oriented, depending on the work practices and requirements of the cost centres. The fundamental change in work practices will mean that team leaders will coordinate the activities of teams (rather than manage), and all team members will be responsible and accountable for the team's outputs and outcomes. These outcomes will be focussed on client services (both internal and external) and increased efficiency and cross-organisational and cross-Portfolio cooperation.

This process will not be easy. It requires a commitment from staff to accept responsibility for team outcomes. As can be seen from the staff profile at Attachment 4, 150 FTE are Level 1 and 2 employees. This factor, together with a relatively conservative organisation culture, will mean that funds, resources and management commitment is required to be generated for training, development, learning and support for all staff.

Costs:

The initial costs to LISWA were the research, development and consultation to provide the rationale and justification for *Reinventing the Organisation.* There has been a considerable psychological cost associated with the restructuring in terms of change and uncertainty, fear of losing jobs, and displaced employees. While a dollar figure cannot be attached to these consequences, nevertheless they are a cost and have meant that processes such as more frequent communication with staff have been introduced to try and offset the psychological cost to employees. It should be noted that this restructure was effected at the same time as the definition, selection and first phase implementation of the new computerised system, *Project Information Access* (see section VG2 of this document).

Value:

Reduction of 12 FTEs in senior management without a transfer of management responsibilities elsewhere. Represents $771,951 over 18 months.

VG2. PROJECT INFORMATION ACCESS: IMPROVING SERVICES AND EFFICIENCY THROUGH COMPUTERISATION

Project Information Access (PIA) is a significant achievement and was launched by the Minister for the Arts in September 1995. PIA is an extensive replacement and upgrading of online services to the public, including graphical interfaces to the catalogues using Internet, the 'information superhighway'. These are platforms on which will be based multimedia and government information services. During the period 1995-1997, further information and services will be added to PIA to bring together the Board's wealth of information resources with those in the State's public libraries and records collections. It will provide a link to other information systems both within Australia and overseas. As a consequence, more extensive services will be provided to the people of Western Australia to satisfy their various information needs.

The project involves a $3.6 million overhaul of information technology, the conversion of existing database and operations to a new, faster system and the opportunity to provide access to information resources not previously possible. This $3.6 million comprises a capital works allocation of $2.4 million over three years and a $1.2 million contribution from recurrent expenditure. In presenting the budget case for capital works funding, the organisation agreed that if $2.4 million was allocated for hardware and software purchases then the Board would reallocate $400,000 each year from its recurrent budget as a productivity savings commitment. In the first year the Board met this commitment and we are now four months into the second year and on target. This cash has been used and will continue to be needed for analysis, development, maintenance, cabling and other costs associated with the project.

The planning, installation and implementation of the new system has been carried out within existing staff resources. Staff have contributed thousands of hours of time tendering for and selecting the system and, in preparing data and implementing the system which is in the second year of a three year implementation period. The ongoing commitment of the staff to the project is crucial to its success as the project affects almost every area of the organisation and has a major impact on our clients.

During the implementation of project Information Access, existing inputs are being held constant while delivering massive project outputs in addition to continuing to deliver all the public services delivered in the past.

While living within existing budgets and expecting to live within forward estimates, various techniques are being used to achieve these increased outputs. These are outlined below.

- More than twelve Project work teams have been, or will be, set up to address issues to do with Searching, Interfacing, Cataloguing, Acquisitions, Exchanges, the Public Library Interface, Circulation, Serials, Indexes, Community Information and Document Delivery. The work of some of these teams is well advanced but others are just gearing up and will have substantial outputs to achieve during the period of this agreement. The teams are generally 5-8 members with more than 50 staff members involved in one or more teams.
- Most of the staff in the work teams are below Level 6 and work additional hours or at weekends for no additional pay. For example, the Level 5 leader of the search team prepared evaluation reports in her own time at home and, in addition, did her own normal supervisory job as well as acting in another position in order to release a colleague to work on the project full time. Staff commitment and enthusiasm is high and worthy of reward as we need it to continue.
- A Level 5 staff member from the State Reference Library has been seconded to work full time on the project as a Co-ordinator. The State Reference Library has carried this cut in resources during this secondment. Other staff worked additional shifts on the reference desk to maintain the service to clients. Similar situations exist for two Level 2/4 Librarians (one from Battye and one from State Reference Library) who are handling the training for the new system across the organisation in addition to their normal duties.
- Work priorities have been re-assessed and hard decisions are being taken to cease doing some work which is considered to represent inadequate return for effort in relation to the benefits to be gained by implementing PIA. Many areas are deliberately taking the time to re-engineer their processes so as to maximise the returns on the new software for productivity and service improvement.
- As a prelude to the transfer of data to the new system, old data bases were purged of outdated records thereby making the searching process quicker and improving productivity even before the transfer and making the catalogues easier for the public to use.

The commitment of staff to this project enabled the entire selection process for the new system to be conducted in a manner which has been praised by the State Supply Commission without the need for expense of consultants who, for a project like this, would have added well in excess of $100,000 to costs. (A Project Manager employed on contract from recurrent funds for three months cost $30,000).

Generally, throughout the agency, staff who were already achieving a level of work output which fully justified their continued employment, have put themselves out to perform well beyond normal expectations because the benefits, for clients and staff, expected from implementing a system which represents a quantum leap in access to information, has provided a high level of motivation. This needs to continue as the feedback from the public and similar organisations has been very positive.

Benefit to Clients:

Information and services are accessible by local, national and international communities via Internet. The facilities currently provided will be updated progressively into the future to continue to meet world standards for technological innovation and will be augmented by sophisticated interactive multi media interfaces that are considered to be state of the art technology world wide.

Value:

$400,000 recurrent expenditure per annum applied to other than capital costs ie; $600,000 during the period of the agreement.

VG3. PROCESSING PUBLIC LIBRARY STOCK TO IMPROVE EFFICIENCY

Objective:

To reduce the cost of shelf-ready library materials for public libraries throughout Western Australia by reassessing the need for labels and catalogue cards.

The public libraries throughout Western Australia are serviced by the Board through the provision of library materials including books on a continuous basis. Staff have identified changes in work practices that will reduce the processes needed to provide labels and catalogue cards for the new books.

Benefits to Clients:

Maintaining existing standards of library stock for use by the public libraries at a reduced cost to the Board.

Performance Indicators:

Decrease of 1 FTE (Level 1) in the processing team. (Equivalent salary $25,330 per annum).

Stationery costs for processing 450,000 books will be reduced by 7.5 cents per book. ($33,750 per annum).

Unit cost of preparing items for use: 1994/1995 $0.94.

Savings:

Savings in cost of stationery on 450,000 books to automated libraries: $33,750

Equivalent of 1 FTE (Level 1 average salary): $25,330

Total value during the period of this agreement: $88,620

Allocation of Benefit:

Cash savings to pay for increase in salaries. FTE savings to cataloguing and indexing projects which will reduce the backlog of West Australian materials awaiting description and addition to the database. Staff resources will also be applied to other indexing and conversion projects to ensure clients have better and more complete access to collections in the computerised catalogues, thus providing further productivity benefits as clients can search for their own materials. See productivity initiative VA6: Reduction in backlogs in cataloguing, indexing and database creation.

VG4. CENTRALISED PURCHASING EFFICIENCIES

Objective:

To reduce the cost of purchasing goods and services through the implementation of a centralised purchasing function. The employment of a Supply Officer dedicated to the purchasing function will enable improved prices for goods and services and the release of FTE time in service delivery areas. The Supply Officer was employed in the Finance and Building Services section in October 1995 within the existing FTE allocation for 1995/1996.

Benefits to Clients:

More efficient use of resources by purchasing goods and services at reduced cost. Estimated 0.2 FTE (Level 1) net saving across all service delivery and support areas freed to concentrate on client services. Greater compliance with State Government policy and procedures and accountability for adherence to State Supply Commission policies.

Performance Indicators:

Examples of savings already made by using centralised purchasing:

Tape copier:	8% saving
Microphones:	55% saving
Book Pockets	27% saving

In 1994/5 approximately $950,000 was spent for purchasing goods and services (excluding information technology and library materials). It is estimated that a 5% decrease in the cost of purchasing goods and services is a conservative valuation of savings in the life of this agreement.

Value:

Estimated 5% saving on budget for 1995/1996—$47,500 per annum

Estimated 0.2 FTE net saving (Level 1) $5,066

Total value during the period of the agreement: $78,849

Allocation of Benefit:

Cash savings to pay for increase in salaries. The 0.2 FTE will be allocated to the work of supporting the LISWA Foundation to raise funds for the organisation. See productivity initiative VA4.

VG5. OUTSOURCING PHOTOCOPIERS

Objective:

To improve the quality, reliability and range of photocopying services to clients and staff within the Alexander Library Building by contracting out the service. This will free FTEs in a number of service delivery and finance areas for other duties.

The Board provides 15 photocopy machines for use by the public and 35 for the staff. These machines are outdated and ageing, thus requiring considerable maintenance from internal staff and external maintenance providers.

The photocopy machines are coin operated, and staff from Finance and Building Services collect and process the monies daily.

The Business Manager is investigating the contracting out of the photocopy machine services. This will become effective before June 1996.

Benefits to Clients:

The quality, reliability and range of photocopying services is improved and staff currently involved in maintaining the copiers and handling monies will be released for providing other client services.

Performance Indicators:

Equivalent of 0.8 (Level 1) FTE in the State Reference Library and Battye Library released from servicing photocopiers and made available for service delivery.

Equivalent 0.5 FTE (Level 1) in Finance and Building Services released from servicing change machines and photocopiers for other duties.

Value:

Equivalent 1.3 FTE savings = $32,930 per annum and during the life of this agreement.

Allocation of Benefit:

The 0.8 FTE will be allocated to productivity initiative VA4 which will provide support to the new Foundation in raising funds for the organisation.

The 0.5 FTE will be allocated to productivity initiative VA3 Centre for the Book.

VG6. PROVISION OF FINANCIAL BUREAU SERVICES TO ARTS PORTFOLIO

Objective:

To make efficiency savings through the provision of financial services, payroll and human resource functions in the Arts Portfolio through a bureau located at the Board's premises.

A new unit will be established called Portfolio Bureau Services which will provide integrated financial, payroll and human resource services to the Arts Portfolio. Information technology services will be reviewed in 1996 to determine the appropriate mix of services and support. The position Manager: Bureau Services is in the process of being advertised and will be filled by February 1996. The staffing for the Bureau Service will be drawn from finance and human resource areas throughout the Arts Portfolio, enabling FTE savings to be made by all agencies in the Arts Portfolio.

Benefits to Clients:

Cost savings in providing financial services, payroll and human resource administrative functions to all agencies in the Arts Portfolio and the Board's share of these savings being allocated to service delivery functions.

Performance Indicators:

Estimated savings to all agencies were calculated by consultants Ernst & Young to exceed $100,000 per annum. (This report is available for perusal). The Board, as a client of the Bureau, with approximately 50% of the bureau activity, should make savings exceeding $50,000 per annum in the provision of financial services. Meetings of the HR Managers in the Arts Portfolio in November 1995 have identified agreed areas for HR Bureau Services, including Clockwork in the first half of 1996, and training administration at a later stage of development of the Bureau Services. No calculations have been done as yet on IS savings.

[Note: There is an initial investment in computer equipment which the Board will fund from its Capital Works Provision for equipment for 1995/1996, thereby acquiring assets. The operational costs of these assets will be charged against the Bureau, and this has been taken into account before arriving at the estimated savings.]

Value:

Estimated $50,000 per annum for financial services by reducing the FTE allocation for 1995/6 and subsequent years. FTE savings of 1 Level 1 FTE.

0.5 FTE (Level 2) saving in Human Resource Services: $14,950.

Total value during the period of this agreement: $82,425.

Allocation of Benefit:

The 0.5 FTE (Level 2) will be allocated to productivity initiative VA3 to enable the Centre for the Book project to proceed.

The 1 FTE will be allocated to productivity initiative VA2 to enable the Leonardo project to proceed.

VG7. COMPUTERISATION OF CONSIGNMENT LISTS

Objective:

To reduce the time taken by Public Records Office staff to record and list consignments of archival records transferred from government agencies to the Public Records Office for permanent storage and use by the public.

In order to keep pace with or improve the speed with which we receive government archival records into custody, it was clear to staff that they would need to alter the way they worked. Technology was seen as part of the answer and changed practices as the other. In 1995/96 it is expected that 0.8 FTE less will be needed to process expected demand.

Benefits to Clients:

Improved access to public records by government agencies and the public using the Archives Search Room, through speedier completion of documentation.

Performance Indicators:

98.5% in time and cost for consignments listed on disc.

Estimated 150 consignments submitted on disc during the period of this agreement.

Average time to input details of one consignment manually is 16 hours. This means 2400 hours for 150 and this cost = $25,950.

Time to input information via disc: 0.25 hours. The cost for 150 = $405.

Value:

$25,545 during the period of the agreement. Equivalent to 0.7 FTE Level 1.

Allocation of Benefit:

This 0.8 FTE will be applied to improving the speed with which records are delivered to researchers in the Search Room. See productivity initiative VA5.

VG8. SELECTIVE PREPARING OF STOCK

Objective:

To reduce the cost by repairing and binding only those resources (books) which are selected by public librarians as part of the used component of their exchanges.

One of the services of the Public Library Service section is to repair and bind books returned to it by public libraries throughout Western Australia. This amounts to thousands of books that are repaired and rebound each year and held on shelves prior to being selected for public library use, as public libraries have an allocation of new and used books each month. A team of employees in PLS has responsibility for repairing and binding books and the books take up a large amount of shelving space in the PLS area.

At a workshop on developing productivity initiatives the binding team reviewed their work practices and determined that it would be more cost effective to repair and rebind only those books that had already been selected by public librarians. This meant that those books that are not popular with readers are not repaired and are sent to the Discarded Books Sale.

Benefits to Clients:

The clients are the public libraries throughout Western Australia. Books which are popular are repaired more quickly and returned to circulation. Resources and materials are not used in repairing books which are not required by public libraries. The backlog of repairs has been cleared and there are no further backlogs, ensuring the full range of used library materials are available for selection to refresh public library stocks.

Performance Indicators:

Cost of repairing library materials is reduced by 20%.

Material requested for repair by public librarians is available for the next exchange (one month turnover rate) providing greater efficiency in the turnover of books between public libraries. Only those books that require repairing are repaired.

Those books that are not popular are not repaired.

Value:

$20,000 per annum for materials and 0.5 of an FTE. Total value during period of this agreement: $48,998.

Allocation of Benefit:

This 0.5 (Level 1) will be allocated to processing of stationery for exchanges for libraries with no computers. This is needed as part of the transfer of work from one section to another but results in overall benefits to the clients. Cash used for payment of salary increase.

VG9. RATIONALISATION OF DISTRIBUTION OF NEW STOCK TO PUBLIC LIBRARIES

Objective:

To increase efficiency by reducing the amount of handling of new stock sent to large public libraries throughout Western Australia. This will be achieved by removing a number of steps in the exchanges process.

In a workshop on developing productivity initiatives, the workers in this area reviewed their current work practices in the handling of new stock. By brainstorming a number of ideas, the staff in this area were able to suggest ways in which their work practices could be changed.

Benefits to Clients:

The new component of exchanges sent to public libraries will be delivered in a more timely manner, therefore making this stock available to members of the public more quickly.

Staff are released from counting and moving stock into more productive activities.

Stock control will be improved.

Performance Indicators:

The number of times an item is handled will be reduced from 6 times to 2, for 70% of all new books sent on exchanges.

Number of new materials supplied to public libraries 1994/1995: 334,581.

This will be compared to the figures for 1995/1996 and ongoing to estimate the productivity savings generated through changed work practices.

Value:

Equivalent 1 FTE Level 1 = $25,330 per annum.

Total during the period of this agreement $37,995.

Allocation of Benefit:

This 1 FTE will enable the creation of an Aboriginal Liaison Officer. See Productivity Initiative VA7.

VG10. BATTYE LIBRARY PRODUCTIVITY GAINS

Objective:

To improve processing and production of information support materials.

Benefits to Clients:

The reorganisation of binding programs has resulted in an improvement in procedures to release staff for other duties.

The extensive rewriting of brochures and the planned upgrading of other information materials will reduce the amount of time staff spend helping clients to locate materials.

Newspaper services have been reorganised and the continued improvement here will result in staff also spending less time with clients in these areas.

Performance Indicators:

These activities will ensure that 1 FTE (Level 1) will be able to be released to focus on the backlog of indexing and adding material to the computer systems. There are considerable backlogs.

Value:

1 FTE (Level 1) will be transferred to productivity initiative VA6, Reduction in backlogs in cataloguing, indexing and database creation.

Total during the period of this agreement: $37,995.

VA1. EXTENDING OPENING HOURS OF STATE REFERENCE LIBRARY AND BATTYE LIBRARY TO SUIT PUBLIC NEEDS

Objective:

The Board and the Minister for the Arts seek to improve services by opening the Alexander Library Building at times convenience to the public.

The current opening hours are:

Monday	9.00 am to 5.30 pm
Tuesday to Thursday	9.00 am to 9.45 pm
Friday	9.00 am to 5.30 pm
Saturday and Sunday	2.00 pm to 5.30 pm

As from 1 January 1996 the following times will apply:

Monday to Thursday	9.00 am to 9.45 pm
Friday	9.00 am to 5.30 pm
Saturday and Sunday	10.00 am to 5.30 pm

This amounts to an extra 12 hours per week. This service will be provided within the existing forward estimates.

Benefit to Clients:

Availability of services on Monday evenings, and all day Saturday and Sunday.

Performance Indicators:

15 hours per week will be funded within forward estimates as a result of savings made elsewhere in the organisation and explained in this document. This includes the shift penalty of $11.70 per evening shift and the weekend shift allowance of an additional 0.5 of normal salary for all hours worked.

Cost:

Monday evening - 5 hours	5 Level 2/4	$24,388
	10 Level 1	$36,748
Saturday/Sunday - 10 hours	7 Level 2/4	$87,776
	13 Level 1	$116,131
TOTAL COST per annum		$265,043
TOTAL COST during the period of Agreement		$397,565

VA2. THE LEONARDO PROJECT: PUTTING INTERACTIVE MULTIMEDIA TO WORK FOR THE BENEFIT OF CLIENTS

Leonardo is the name given to a partnership between LISWA and other cultural and academic institutions aimed at providing greater public access to cultural material through networked, interactive multimedia. The Leonardo Project will commence in 1996 and continue into the future. The information collection and dissemination is a dynamic medium and has no foreseeable conclusion as it is a new way of delivering core services.

As a complement to Project Information Access, access to collections will be made available through the systematic and continuous availability of Western Australian materials and collections on the Internet. For example, a person anywhere in the world would not only have access via the Internet to the history of Western Australian art but would be able to view specific paintings. This project is seen by the Arts Portfolio CEOs and the Minister for the Arts as a most significant and relevant project.

This will enable people to experience the words, sounds and images contained in the unique collections of the J S Battye Library of Western Australian History, the Public Records Office and the State Reference Library. Further, through partnerships formed within the Arts Portfolio, information from the Western Australian Museum and the Art Gallery collections will become available to the local, national and international community.

Costs:

The Leonardo Project will commence early in 1996 and the Board is funding the initial development of the Leonardo Project from forward estimates. Staff will be involved with planning, selecting and organising materials for inclusion, digitising material, providing the text to accompany the images and providing better access to the collections through catalogues and indexes.

Value:

Staffing levels will be augmented by the transfer of 1 FTE (Level 1) from productivity initiative VG6. This is a transfer of resources from Finance and Building Services as a result of the establishment of the Arts Portfolio Bureau Service.

VA3. CENTRE FOR THE BOOK: INVOLVING THE COMMUNITY IN BOOKS AND IDEAS

The Centre for the Book will promote the importance and value of the book, in all of its forms, as a central part of the cultural, scholarly, scientific and commercial life of Western Australia. While inspired by similar organisations in the British Library and the Library of Congress, the Western Australian concept is unique.

In August 1995 a proposal was developed and approved by the Board to develop a Centre for the Book in the Alexander Library Building. The Centre for the Book will promote the work of writers and the development of ideas, will provide a central accessible space where information about books and writing can be shared and valued, and will support a range of book related activities for adults and children. Publications and merchandising will also be explored as ways to generate income to continue to fund the Centre for the Book. In essence, the Centre will become a focus for public programs and the raising of financial support from the community.

Costs:

Initial funding for the Centre for the Book will be available to LISWA through debt recovery from the Perth City Council, and will therefore be within existing forward estimates. A Manager for the Centre for the Book will be appointed early in 1996. Corporate support and funding will be explored through residencies, exhibitions, new technologies, seminars, festivals and special events. Partnerships with organisations across government and the community have the potential for generating additional resources.

Value:

Apart from the position of Manager for the Centre for the Book, staffing for the Centre for the Book will be from the existing FTE allocation. This will be achieved through the transfer of the 0.5 FTE (Level 1) gained through productivity initiative VG5 which transfers savings from Finance and Building Services and 0.5 FTE (Level 2) gained through productivity initiative VG6 which transfers savings from Human Resources as a result of the establishment of the Arts Portfolio Bureau Service.

VA4. THE LISWA FOUNDATION: RAISING MONEY FROM BUSINESS AND THE COMMUNITY

Objective:

To raise funds from the community to support the activities of the Board and the Library and Information Service of Western Australia (LISWA), the operating arm of the Board.

The body is to be known as The LISWA Foundation.

Benefits to Clients:

The Board has no funds other than those allocated on an ongoing basis from CRF. To gain sponsorship, bequests and other funds from business and the community, it has been our experience that we need to allocate a resource to do this work. To date (with our previous Westralian Library Foundation) it has been unproductive for staff and members of the community to try to do this work in their spare time. The resources raised will go to the preservation of and addition to the collections and other activities of LISWA.

Performance Indicators:

The goal is to have this position funded by the Foundation within the life of the Agreement and to have sufficient funds in hand for the Foundation to be considered a viable proposition by its existing Patron and the new Vice-Patrons he will recruit.

Value:

1 FTE (Level 1). Value: $37,995 during the period of the agreement.

This position will be more likely to be a contract part time position and be increased as resources from the Foundation allow.

This FTE is allocated from productivity initiatives VG4 Centralised purchasing and VG5 Outsourcing Photocopiers.

VA5. PUBLIC RECORDS SEARCH ROOM: IMPROVING CLIENT SERVICES

Objective:

To provide improvement in the time taken to deliver materials to researchers in the Public Records Office Search Room.

Benefits to Clients:

The shorter the time between request and delivery of material means less waiting for the client, more control over materials and a better turnover of materials for a larger number of clients.

Performance Indicators:

The reduction in waiting time for clients and the reduction in requests awaiting processing.

Value:

0.8 FTE (Level 1) $25,545. This has been transferred from productivity initiative VG7, Computerisation of Consignment Lists.

VA6. REDUCTION IN BACKLOGS IN CATALOGUING, INDEXING AND DATABASE CREATION TO ASSIST CLIENTS FIND THEIR OWN MATERIALS

Objective:

To provide the full benefits of new computer systems it is essential that as much data be provided as possible. In this way clients can perform their own searches and thus save time for themselves and staff. The more clients that can perform their own enquires the more staff that are freed for helping others and so the continuous improvement cycle can begin.

Benefits to Clients:

Currently, clients must visit the Alexander Library Building to search for and use material in collections like the Battye Library. The more material that can be placed on computers then the easier it is for visitors to find their own material. In addition, there are large numbers of potential clients who could be serviced electronically were the indexes, databases and catalogues available on the Internet. This project utilises savings in FTE's from productivity initiatives to do this work.

The Board has a legislative responsibility for WA's documentary heritage and this has led to the creation of a series of card indexes developed over many years. With the new computer systems, great efficiencies could be achieved if this material could be transferred to either the computer or microfilm. There are 95,000 cards awaiting conversion and this represents a significant benefit to clients in not only saving their time through looking for information in one place but also saving staff time as clients move to self help.

Performance Indicators:

Elimination or major reduction in backlogs in Western Australian materials. Card indexes can be changed to computers and material in the closed stack areas made more available to clients.

Value:

1.0 FTE from productivity initiative VG3 Processing of Public Library Stock.

1.0 FTE from productivity initiative VG10 Battye Library Productivity Gains

VA7. ABORIGINAL SERVICES LIAISON OFFICER (PUBLIC LIBRARY SERVICES): TAKING PUBLIC LIBRARIES TO ABORIGINAL COMMUNITIES

Objective:

To develop appropriate resources and services to meet the needs of Aboriginal people.

Benefits to Clients:

In 1995 the Board completed an Aboriginal and Torres Strait Islander Services Delivery Plan. This is for the purpose of delivering public library services. An Aboriginal person would be employed to assist in the implementation of this plan for which a Customer Service Council will be established in December 1995.

Performance Indicators:

The establishment of the position and the implementation of the Plan.

Value:

1.0 FTE from productivity initiative VG9, Rationalisation of distribution of new stock to public libraries.

VA8. GOVERNMENT LIBRARIES CONSULTANCY SERVICES: A WHOLE OF GOVERNMENT APPROACH

Objective:

To assist in continuously improving the provisions of information services to government agencies and officers, reduce the cost of technical services by providing centralised services, minimise duplication and optimise access through a common whole of government database.

Benefits to Clients:

The *Just in Case or Just in Time* Report on government libraries clearly identified a role for LISWA in advising and assisting government agencies with the provision of libraries. Given the number of requests and enquires received by the State Reference Library from government agencies, there is a constant and ongoing need for our assistance, and a recognition of the benefit of a whole of government approach to the provision of information and library services.

The establishment of such a service has the potential to assist in continuously improving the provisions of information services to government agencies and officers, reduce the cost of technical services by providing centralised services, minimise duplication and optimise access through a common whole of government data base.

Performance Indicators:

As a result of the recent restructure, the State Reference Library has an as yet unplaced Level 7 officer. When the officer has been successfully placed in an other agency, that FTE will be used to provide advisory and consultancy services to government agencies and their libraries. It is expected that much of this time would be able to be charged to the relevant government agencies which request assistance.

Value:

Equivalent 1 FTE Level 7 = $85,476 during the period of this agreement.

MARK DUFFY PLASTERERS INDUSTRIAL AGREEMENT
No. AG 118 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Mark Duffy T/A Mark Duffy Plasterers.

No. AG 118 of 1996.

Mark Duffy Plasterers Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 Mark Duffy Plasterers Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Mark Duffy Plasterers 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories
Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Mark Duffy trading as Mark Duffy Plasterers (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award").

(2) There are approximately three employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 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—Wage Rates.

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 inability 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 subclause (2) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

14.—SENIORITY

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.

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.

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.

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 signing 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Mark Duffy

On behalf of Mark Duffy trading as Mark Duffy Plasterers

Dated this 17th day of April 1996.

APPENDIX A—WAGE RATE

	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

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol

Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

THE NATIONAL TRUST OF AUSTRALIA (WA) ENTERPRISE AGREEMENT 1996
No. PSA AG 118 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

National Trust of Australia (WA)

and

The Civil Service Association of Western Australian Branch.

No. PSA AG 118 of 1996.

The National Trust of Australia (WA) Enterprise Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

30 May 1996.

Order.

HAVING heard Mr S. Majeks on behalf of the Applicant and Ms J. Blake on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as The National Trust of Australia (WA) Enterprise Agreement 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect from the beginning of the first pay period commencing on or after 14 May 1996.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as The National Trust of Australia (WA) Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Definitions
4. Parties and Estimated Number of Employees Bound
   4.1 Parties
   4.2 Estimated Number of Employees Bound
5. Scope
6. Purpose of the Agreement—Aim of Enterprise Bargaining
7. Date and Period of Operation and Review
8. No Further Claims
9. Relationship to Parent Awards
10. Audit of 4% Second Tier and 1989 S.E.P.
11. Single Bargaining Unit
12. Objectives and Principles
13. Conditions of Work
   13.1 Workplace Cange
   13.2 Salaries—System and Timing of Payments for Productivity
   13.3 Hours of Work
   13.4 Higher Duties Allowance
   13.5 Leave—All Categories
   13.6 Public Service Holidays
   13.7 Dispute Resolution Procedure
   13.8 Grievance Resolution Procedure
14. Productivity
   14.1 Performance/Productivity Measurement System
   14.2 Aim
   14.3 Objectives
   14.4 Customer Focus
15. Signatures of Parties

Attachment 1—Flexible Working Hours Policy
Attachment 2—Classification/Salary Levels

3.—DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following terms shall have the following meanings:

"Agreement" means the Enterprise Agreement of the National Trust of Australia (W.A.) 1996.

"Association" means the Civil Service Association of W.A. (Inc.).

"Award" means the Government Officers Salaries, Allowances & Conditions Award 1989.

"Council" means the Council of the National Trust of Australia (W.A.).

"Employer" means the Council of the National Trust of Australia (W.A.).

"Employees" means the paid staff of the National Trust of Australia (W.A.) located at Head Office, 4 Havelock Street, West Perth.

"NT (W.A.)" means the National Trust of Australia (W.A.).

"Parties" means the Employer and Employees when referred to jointly in these terms and conditions.

"W.A.I.R.C." means the Western Australian Industrial Relations Commission.

4.—PARTIES AND ESTIMATED NUMBER OF EMPLOYEES BOUND

4.1 PARTIES

The parties to this Agreement are:

Employer: The Council of the National Trust of Australia (W.A.).

Union: The Civil Service Association of WA (Incorporated).

4.2 ESTIMATED NUMBER OF EMPLOYEES BOUND

As at 20 March 1996 the number of employees subject to this Agreement totalled eight (8).

5.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all employees of the N.T. (W.A.) located at Head Office who are members of or eligible to be members of the Association party to this Agreement.

6.—PURPOSE OF THE AGREEMENT—AIM OF ENTERPRISE BARGAINING

The purpose of the Enterprise Bargaining process and this Agreement, is to improve the functioning and productivity of the organisation in accordance with its vision and mission. Work practices will become more efficient and effective leading to increased and improved service and income and reduced costs.

Extra working hours will be utilised by employees to develop more efficient work practices as well as servicing the NT (W.A.) membership.

From this Agreement the workforce of the N.T. (W.A.) will be characterised by:

(i) a defined and consistent customer service focus;

(ii) strong links and partnerships with the voluntary component of the Trust;

(iii) development of training opportunities to create a multi-skilled workforce;

(iv) an enhanced capacity to serve the W.A. community as an advocate for conservation;

(v) an enhanced capacity to serve the W.A. community as an educator in heritage;

(vi) a current and continuing corporate planning process of high quality;

(vii) a consistently participative style of management which underpins a motivated productive workforce;

(viii) maintenance and, as appropriate, improvement of a performance management system.

7.—DATE AND PERIOD OF OPERATION AND REVIEW

This Agreement shall operate from the first pay period commencing on or after the date on which this Agreement is registered in the Western Australian Industrial Relations Commission being the 14th May 1996. The salary increase will be paid retrospective to 17 January 1996.

This Agreement shall remain in force for a period of twelve (12) months from date of registration and the parties will review this Agreement six (6) months prior to the date of expiration of this Agreement.

The pay quantums and conditions set out in this agreement will remain and form the basis for future agreements or continue to apply in the absence of a new agreement.

8.—NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary increases sought or granted except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

9.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Award. In the case of any inconsistencies between the provisions contained in this Agreement and those in the Award, the provisions in this Agreement shall have precedence to the extent of the inconsistencies.

10.—AUDIT OF 4% SECOND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLES

The parties agree that matters arising from previous award changes emanating from the Restructuring and Efficiency Principle of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—SINGLE BARGAINING UNIT

(a) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(b) The SBU comprised representatives from the N.T. (W.A.) and the Association.

12.—OBJECTIVES AND PRINCIPLES

The objectives and principles of the parties to the Enterprise Bargaining Agreement include:

(i) Best practice in management and service delivery;

(ii) Remuneration appropriate to the quality and value of the work performed;

(iii) Skill development for staff which enhances their productivity and performance;

(iv) Flexibility in the workplace which encourages multi-skilling and adaptability;

(v) A formalised system which ensures training, development and support of volunteers will be maintained;

(vi) Commitment to the conservation of the natural and cultural heritage environment;

(vii) Promotion of occupational health, safety and equal opportunity for all employees and volunteers.

13.—CONDITIONS OF WORK

13.1 Workplace Change

As with many organisations in the 1990s, workplace change is occurring at an accelerating pace. The NT (W.A.) is being affected by advances in information technology, changes in staffing, and the perennial need for more resources. Traditionally staff have been organised as individual specialists with several clerical/administrative staff to support them. While this has resulted in a high level of expertise for some individuals, it has to some extent inhibited opportunity for the development of a team approach to work. In addition, vesting most of the expertise in any one individual causes considerable disruption if that person is absent when particular information is required.

There is a compelling argument for both multi-skilling and an integrated team approach with this small and committed group of employees. The NT (W.A.) has initiated a process of planning which will include development of team work. The direction has resulted in a resilient, self motivated team capable of undertaking a variety of tasks, dealing with members of the NT (W.A.) and the public in general and working productively with volunteers.

The concept of working as a team is a fundamental shift from the traditional way of working in the NT (W.A.). In addition to improved productivity there is potential for better communication processes and a capacity to undertake major long term tasks.

The Chief Executive Officer has considerable externally focused responsibilities as well as overall responsibility for the efficient management of NT (W.A.) resources. The development of a workteam approach will empower NT (W.A.) employees to accept greater responsibility for "sign off" authority. This will reduce the involvement of the CEO in day to day activities and facilitate his greater involvement in activities highly valued by the Council of the NT (W.A.) such as advocacy and fundraising.

The following steps will be undertaken to implement a team building program:

(i) Employees will receive on the job training to widen the range of skills they have mastered.

(ii) These on the job activities will also increase the knowledge of each employee in the areas of Heritage, Administration and Finance, Public Affairs, and Education.

(iii) The organisation will be restructured to ensure each employee has an opportunity to apply their new skills and knowledge in each of the main areas of activity of the NT (W.A.).

13.2 Salaries

Employee salaries will commence at the level set out in this Agreement (see Attachment 2 for salary scale details), and will be paid in fortnightly instalments.

This Agreement provides for an increase of:

(1) 10% payable to six (6) full time employees from the date of registration of this Agreement, paid retrospective to 17 January 1996.

(2) 2% payable to two (2) casual employees from the date of registration of this Agreement, paid retrospective to 17 January 1996.

In adopting this salary structure, the NT (W.A.) will also examine opportunities available to it to offer appropriate "salary packaging" options for staff members without increasing the organisation's operational costs.

13.3 Hours of Work

Normal hours of work for employees will be an average of 40 hours per week Monday to Friday with a daily lunch interval of thirty (30) minutes minimum to be taken after a maximum of five (5) hours duty. These hours will be worked in accordance with the NT (W.A.) flexible working hours policy (Attachment 1 to this Agreement refers).

13.4 Higher Duties Allowance

Employees performing higher duties in any continuous period exceeding ten (10) working days and except when training occurs, shall be eligible for full payment at the higher level. All periods of acting less than ten (10) working days in a higher

position may be claimed as experience by employees applying for higher positions.

13.5 Leave—All Categories

Annual Leave

Current award provisions for annual leave shall continue for the period of this Agreement. Annual leave loading will be paid on an annualised basis and included in the fortnightly salary of each employee covered by this Agreement.

Annual leave loading will continue to be paid when such leave as has been accrued prior to the commencement of this Agreement is taken. However, payment for annual leave accrued prior to this Agreement will be made at the employee's salary rate prior to the commencement of this Agreement.

Family Leave

Employees covered by this Agreement may with the consent of the NT (W.A.) use sick leave up to a maximum of five (5) days per annum in accordance with this clause to provide care for another person subject to the employee being responsible for the care of the person concerned and the person concerned being a member of the employee's immediate family.

The term "immediate family" includes: a spouse or partner (including a former spouse or partner) of the employee; a child or other persons directly dependent upon the employee (including an adopted child; a step child or an ex nuptial child); or a parent of the employee. The employee should produce satisfactory evidence of the illness of the other person to the NT (W.A.).

The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence. Leave taken under this provision is deemed to be Sick Leave. An employee may elect, with the consent of the NT (W.A.) to take unpaid1eave for the purpose of providing care to a family member who is ill.

13.6 Public Service Holidays

Paragraph (b) of subclause (1) of Clause 20.—Public Service Holidays of the Award shall not apply.

13.7 Dispute Resolution Procedure

Any questions, disputes or difficulties arising under this Agreement will be dealt with in accordance with the following procedure:

(i) The Association representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by the Association representative;

(ii) If the matter is not reasonably resolved following the discussion in accordance with subclause (i) hereof, the matter shall be referred by the Association representative and/or the employee/s to the Chief Executive Officer of the NT (W.A.) for resolution;

(iii) If the matter is not resolved within a reasonable time following the Association representative/s and/or employee/s notification of the dispute to the Chief Executive Officer of the NT (W.A.), it may be referred by either party to the Western Australian Industrial Relations Commission.

13.8 Grievance Resolution Procedure

If an employee considers they have a grievance the matter shall be acted upon in accordance with the provisions contained in this clause.

The types of grievance that can be resolved are as follows:

(i) EEO Grievances—

*Racial harassment

*Sexual harassment

*Discrimination or harassment due to a person's sex, marital status, pregnancy, race,

impairment, age, family responsibility or family status, and political or religious conviction.

(ii) Health and Safety Grievances—

*Health and safety issues in the workplace

*Hazardous substances in the workplace.

(iii) General Grievances—

This covers a variety of grievances that can occur from time to time in the workplace excluding the following:

*Those referred to in (I) and (ii) above.

*Those referred to in Clause 13.10 Dispute Resolution.

*Those that have a formal appeal process such as grievances relating to promotions or classifications.

Grievances will be handled in a manner which ensures that they are resolved promptly, confidentially and in accordance with legislative requirements.

An employee who considers they have grounds for a grievance may submit the grievance as follows:

(i) EEO Grievances—To their immediate supervisor or an authorised Grievance Officer;

(ii) Health and Safety Grievances—To their immediate supervisor, or Health and Safety Representative;

(iii) General Grievances—To their immediate supervisor in the first instance and if not resolved to be submitted in writing to the Chief Executive Officer.

The grievance should be reported as soon as practicable after the grievance has arisen so as to enable the supervisor or other authorised person to remedy the grievance rapidly and as near as possible to the point of origin.

The employee may request the assistance or presence of an Association representative or other person of their choice at any stage of the grievance resolution process.

14.—PRODUCTIVITY MEASUREMENT

During the life of this Agreement the following productivity measurement initiatives will be investigated and, if appropriate, implemented. Productivity achievements from these initiatives will be identified, and any productivity gains will be incorporated into a quantum pay increase in the next Agreement.

14.1 Performance/Productivity Measurement System

To assist in achieving the NT (W.A.) corporate objectives the development of a performance/productivity measurement system will commence. Without limiting the scope of the performance/productivity measurement system, issues to be addressed are:

* Key aims for the NT (W.A.) arising out of the program statements, corporate strategic and business planning process;
* Comprehensive productivity and performance indicators based on Key Success Areas and trends in continuous improvements to be linked with established Program and Annual Report Indicators;
* Baseline measures and targets which clearly establish and describe the Key Success Areas;
* An appropriate performance/productivity measurement system which involves the parties to the Agreement and facilitates a culture of continuous improvement over time;
* Customer feedback and input together with measures of customer service with the NT (WA)'s service efficiency and effectiveness;
* Review strategies;
* Gain sharing mechanisms.

A team-based approach involving all levels of staff will be utilised to develop the performance/productivity measurement system.

TARGET: To be developed by 1 January 1997.

14.2 Our Aim

The aim of the management and employees of the NT (W.A.) is to assist the Council of the NT (W.A.) to conserve Western Australia's heritage through promotion, education, management and membership.

The primary activities of the NT (W.A.) focus on:

(i) Conservation of Western Australia's heritage, both natural and cultural;

(ii) Establishing and maintaining broad-based community support including membership;

(iii) Promotion and education about the importance of heritage to the whole community;

(iv) Reliance upon the commitment of volunteers in the NT (W.A.).

14.3 Objectives

Through a continuous improvement process the management and employees of the NT (W.A.) aim to:

(i) Deliver consistent high quality services to satisfy its employer and through them the membership and other customers of the NT (W.A.) as well as the wider community;

(ii) Increase productivity in order to assist the Council of the NT (W.A.) in the more effective and efficient application of its resources.

14.4 Customer Focus

The major services provided by the N.T. (W.A.) are:

(i) Conservation, maintenance, management and interpretation of historic places and objects;

(ii) Education about the conservation of Western Australia's heritage;

(iii) Membership activities and support;

(iv) Asset management including planning and assessment of heritage buildings and places;

(v) Heritage planning and advocacy.

15.—SIGNATURES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement on behalf of the respective organisations party to this Agreement.

Signed for and on behalf of

CIVIL SERVICE ASSOCIATION OF WA (INCORPORATED) by:

.....

D. ROBINSON
BRANCH SECRETARY
CPSU/CSA
Date: ..../..../....

Signed for and on behalf of

THE NATIONAL TRUST OF AUSTRALIA (W.A.) by:

.....

T. PERRIGO
CHIEF EXECUTIVE OFFICER
NATIONAL TRUST OF AUSTRALIA (W.A.)
Date: ..../..../....

Attachment

Attachment 1.

FLEXIBLE WORKING HOURS POLICY

1. POLICY OBJECTIVE

To enhance the N.T. (W.A.) scope in:

(i) Providing quality client service;

(ii) Meeting the business needs of the organisation;

(iii) Allowing greater flexibility to meet personal choice.

2. DEFINITION

Flexible working hours means that employees can vary their working hours to meet peak workload demands and accommodate personal requirements. This arrangement will be subject to previous approval of the Chief Executive Officer.

3. HOURS OF DUTY

Employees may negotiate their own starting and finishing time on a day to day basis as they complete the required working hours (full time or part time) every four weeks and providing customer needs are met. Resource needs and hours required to be worked will be determined within the work environment and agreed by the supervisor to decide the most suitable working arrangements. The hours of duty may be performed during the period 7:00am -7:30pm Monday to Friday. Normal office hours for the NT (W.A.) are 9am to 5pm Monday to Friday.

4. RECORDING ATTENDANCE

An effective monitoring system has been established for hours worked and work output which can be used for the purposes of confirming hours of attendance and productivity for payment and audit purposes.

5. ACCREDITED HOURS

Within each four week period, extra hours may be accumulated. These accredited hours may be accumulated up to the equivalent of 40 hours during any 6 month period and taken in any hourly or daily composition as agreed by the supervisor.

6. ADVANTAGES OF FLEXIBLE WORKING HOURS

Flexible Working Hours are designed to better meet the business needs of the N.T. (W.A.) and to provide a greater opportunity to suit the personal preference of employees.

Flexible Working Hours also enables part time employees the opportunity, in conjunction with the supervisor, to tailor attendance time most suitable to working commitments and personal requirements.

Attachment 2

CLASSIFICATION/SALARY LEVELS

Level	Salary p.a. Existing	Salary p.a. 17/1/96 10%	Casual Salary p.a. base rate Existing	Casual Salary p.a. base rate 17/1/96 2%	Casual Salary p.a. with casual loading
Level 1					
Under 17	10,873.00	11,960.30	10,873.00	11,090.46	11,853.54
17 years	12,707.00	13,977.70	12,707.00	12,961.14	13,852.94
18 years	14,822.00	16,304.20	14,822.00	15,118.44	16,158.67
19 years	17,157.00	18,872.70	17,157.00	17,500.14	18,704.24
20 years	19,267.00	21,193.70	19,267.00	19,652.34	21,004.53
21 years or 1st year	21,165.00	23,281.50	21,165.00	21,588.30	23,073.69
22 years or 2nd year	21,817.00	23,998.70	21,817.00	22,253.34	23,784.49
23 years or 3rd year	22,468.00	24,714.80	22,468.00	22,917.36	24,494.20
24 years or 4th year	23,115.00	25,426.50	23,115.00	23,577.30	25,199.55
25 years or 5th year	23,766.00	26,142.60	23,766.00	24,241.32	25,909.25
26 years or 6th year	24,417.00	26,858.70	24,417.00	24,905.34	26,618.96
27 years or 7th year	25,166.00	27,682.60	25,166.00	25,669.32	27,435.51
28 years or 8th year	25,684.00	28,252.40	25,684.00	26,197.68	28,000.22
29 years or 9th year	26,450.00	29,095.00	26,450.00	26,979.00	28,835.30
Level 2					
1st year	27,367.00	30,103.70	27,367.00	27,914.34	29,835.00
2nd year	28,070.00	30,877.00	28,070.00	28,631.40	30,601.39
3rd year	28,809.00	31,689.90	28,809.00	29,385.18	31,407.04
4th year	29,590.00	32,549.00	29,590.00	30,181.80	32,258.47
5th year	30,407.00	33,447.70	30,407.00	31,015.14	33,149.15
Level 3					
1st year	31,530.00	34,683.00	31,530.00	32,160.60	34,373.42
2nd year	32,405.00	35,645.50	32,405.00	33,053.10	35,327.33
3rd year	33,307.00	36,637.70	33,307.00	33,973.14	36,310.68
4th year	34,233.00	37,656.30	34,233.00	34,917.66	37,320.18
Level 4					
1st year	35,503.00	39,053.30	35,503.00	36,213.06	38,704.71
2nd year	36,498.00	40,147.80	36,498.00	37,227.96	39,789.44
3rd year	37,522.00	41,274.20	37,522.00	38,272.44	40,905.79
Level 5					
1st year	39,494.00	43,443.40	39,494.00	40,283.88	43,055.63
2nd year	40,827.00	44,909.70	40,827.00	41,643.54	44,508.84
3rd year	42,212.00	46,433.20	42,212.00	43,056.24	46,018.74
4th year	43,649.00	48,013.90	43,649.00	44,521.98	47,585.33
Level 6					
1st year	45,960.00	50,556.00	45,960.00	46,879.20	50,104.74
2nd year	47,521.00	52,273.10	47,521.00	48,471.42	51,806.52
3rd year	49,157.00	54,072.70	49,157.00	50,140.14	53,590.05
4th year	50,893.00	55,982.30	50,893.00	51,910.86	55,482.61
Level 7					
1st year	53,555.00	58,910.50	53,555.00	54,626.10	58,384.67
2nd year	55,397.00	60,936.70	55,397.00	56,504.94	60,392.78
3rd year	57,401.00	63,141.10	57,401.00	58,549.02	62,577.51
Level 8					
1st year	60,658.00	66,723.80	60,658.00	61,871.16	66,128.23
2nd year	62,991.00	69,290.10	62,991.00	64,250.82	68,671.62
3rd year	65,884.00	72,472.40	65,884.00	67,201.68	71,825.52
Level 9					
1st year	69,497.00	76,446.70	69,497.00	70,886.94	75,764.34
2nd year	71,938.00	79,131.80	71,938.00	73,376.76	78,425.48
3rd year	74,722.00	82,194.20	74,722.00	76,216.44	81,460.54

NOVACOAT PTY LTD ENTERPRISE BARGAINING AGREEMENT NC01 OF 1995
No. AG 119 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Novacoat Pty Ltd.

No. AG 119 of 1996.

Novacoat Pty Ltd Enterprise Bargaining Agreement NC01 of 1995.

COMMISSIONER A.R. BEECH.

10 June 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K. Dwyer 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 Novacoat Pty Ltd Enterprise Bargaining Agreement NC01 of 1995 be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Novacoat Pty Ltd Enterprise Bargaining Agreement NC01 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application of Agreement
4. Parties Bound
5. Period of Operation
6. Relationship to Parent Award/Order
7. Objectives and Principles
8. Improvement Measures
9. Training and Skills Development
10. Resolution of Disputes
11. Rates of Pay
12. No Extra Claims
13. Signatories to the Agreement

3.—APPLICATION OF AGREEMENT

(1) This agreement shall apply to Novacoat Pty Ltd with respect to all employees engaged in any occupation specified in the Industrial Spraypainting and Sandblasting Award 1991.

(2) There are approximately 30 employees covered by this agreement.

4.—PARTIES BOUND

The parties to this agreement are:

(1) The employer

Novacoat Pty Ltd hereby referred to as the company.

(2) The union

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers hereby referred to as WABLPPU.

5.—PERIOD OF OPERATION

This agreement shall be effective to 31 December 1997. Notwithstanding this, elements of this agreement have been adopted and implemented by the mutual agreement and in good faith of both parties during the negotiating period prior to registration. Elements of the agreement may also be revised during the period of operation by mutual agreement of both parties.

6.—RELATIONSHIP TO PARENT AWARD/ORDER

(1) This agreement is to be read and interpreted in conjunction with the Industrial Spraypainting and Sandblasting Award 1991 (the award).

(2) Where there is inconsistency between this agreement and the award this agreement shall prevail to the extent of the inconsistency.

(3) On the occasions that the employees are required to be engaged in work other than the workshop premises an agreement shall be reached between the company and the employees concerned on the terms and conditions of employment that may apply: provided always that the provisions of the National Building and Construction Award, 1990, shall be recognised as the minimum requirements to be observed.

7.—OBJECTIVES AND PRINCIPLES

(1) The parties are committed to identifying common objectives of improved productivity, flexibility, efficiency and delivery of quality service. Achievement of these objectives will lead to enhance the quality and security of employment for all Novacoat personnel by securing the in-going viability and future of the company as a business concern.

(2) The parties are committed to the following principles in pursuing the above.

(a) To promote the development of trust and co-operation between management and employees and, in doing so, to break down the barriers of the "them-and-us" mentality.

(b) Honesty and mutual respect between individuals to prevail at all times.

(c) Respect for the property of the company and for that of fellow workers.

(d) Acceptance of each person's duties and responsibilities to oneself, to one's co-workers and to the company.

(e) Enhance and protect the quality of the environment and contribute towards the development and maintenance of a safe and healthy workplace.

(f) Improve the competitive position of the company in the market place.

(g) Promote the acquisition and utilisation of labour skills, better working practices and improved remuneration based on genuine productivity improvements.

8.—IMPROVEMENT MEASURES

In order to achieve the main aims of improved productivity, efficiency and flexibility the following measures are being implemented.

(1) Occupational Health and Safety

- The company is committed to attain high levels of safety and seeks to minimise the occurrence of injuries and accidents and to eliminate the potential for such occurrences. Particular emphasis will be placed upon the provision and proper utilisation of personal protective equipment. The company and all employees shall comply with the provisions of the Occupational Health and Safety legislation, particularly when dealing with hazardous chemicals or working with obnoxious materials.
- With the co-operation and determined commitment from both management and employees as communicated through the safety committee, further gains will be made in this area.
- Health and safety meetings to be held at regular intervals.

(2) Reduction in Sick Leave and Absenteeism

All employees are to provide their personal commitment to the elimination of unjustified and unnecessary absences from work.

(3) Electronic Funds Transfer of Wages

Wages will be paid into the employee's bank account on a weekly basis via electronic funds transfer. Where errors occur

in an employee's weekly pay the error will be rectified by the company in one of the following ways:

(a) In the case of errors up to $20.00 an adjustment will be made in the next pay.

(b) In the case of errors in excess of $20.00 an amount equal to the error will be deposited by EFT by COB on the following Friday.

(4) Skill Utilisation

Employees will carry out all duties that are within the limits of their skill, competence and training. Opportunities to further develop relevant skills in line with NBCITC guidelines shall be offered to all employees on an equal basis and shall not be refused by reasonable request. Additional training will link with the multi-skilling classification structure.

(5) Overtime

Employees will not engage in "one-in, all in" overtime practices or bans, and overtime will be made available as required by the company to an individual or group, regardless of the "standard" hours being worked on site at the time. The opportunity to work overtime will be shared fairly amongst those employees who have the required skills.

(6) Flexibility of Rostered Days Off

In order to further the productivity and flexibility of the company, employees covered by the Industrial Spraypainting and Sandblasting Award 1991 will be able to accumulate rostered days(s) off (RDOs) (to the maximum of 13 days) or the RDOs may be substituted for an alternative day(s), including either alternative Mondays or any other weekly working day.

At least three days prior to the industry RDO the company will indicate to its employees how many employees will be required to work on the RDO.

The accumulated RDOs may be taken either in single days or in multiples, providing the following is adhered to:

(a) In each case notice is required to be given and approval granted by mutual agreement.

(b) All RDOs will be treated as a normal paid working day.

(c) In the case of two or more days to be taken consecutively, a minimum of one week's notice is required, as per annual leave requirements.

(d) All accumulated RDOs are to be taken within the calendar year of them falling due.

(e) Approval for taking alternative RDOs shall not be unreasonably withheld.

(7) Smoko/Lunch/Crib Break Flexibility

In keeping with the aim of providing the highest standards of customer service it may be necessary to defer the observance of meal or crib breaks to enable the completion of the task at hand in a timely manner.

Crane operators and attendants may be required, on occasions, to stagger their scheduled mealbreaks to enable the completion of loading or off-loading of vehicles if less than quarter of an hour remains to complete this task.

(8) Housekeeping

Employees shall individually and collectively contribute to maintaining a clean and safe workplace. This includes, but is not limited to, the proper disposal of waste materials and tidy and secure storage of equipment when not in use.

(9) Punctuality

All employees shall be required to adhere to the prescribed starting and finishing times unless specific alternative arrangements have been agreed to with regard to the staggering of shifts or the working of overtime. The prescribed periods for smoko and lunch breaks shall also be complied with.

(10) Wastage and Rework

There shall be a conscious and determined effort by all employees to reduce or eliminate unnecessary costs due to wastage of materials and labour through carelessness, poor workmanship or improper use of resources.

Examples of problem areas where abnormal costs are incurred include: excessive paint thickness; catalysing paint surplus to requirements; excessive solvent usage; poor utilisation of consumables; poor cleaning of spray equipment; abuse of protective equipment issues (eg gloves, goggles, visors, respirators, overalls etc), poor maintenance or abuse of equipment.

9.—TRAINING AND SKILLS DEVELOPMENT

Skill development is an integral part of the philosophy adopted by the parties to this agreement. It will provide employees opportunities to develop and broaden their skills.

The parties are committed to continuation of the existing co-operative approach to flexible work practices and multiskilling.

Training, appropriate to the company's present and future direction will be recognised and accredited so that portability is achieved. Training will be in accordance with CTA policies and guidelines. However the company reserves the right to include certain in-house training programmes that are designed to supplement the company's needs.

10.—RESOLUTION OF DISPUTES

(1) Where a question, dispute or difficulty arises out of the operation of this agreement the matter shall initially be discussed between the employee concerned and, if that employee so desires, his/her union delegate and the employee's immediate supervisor.

(2) If the grievance is not resolved by the discussion referred to in subclause (1) of this clause the union delegate shall discuss and attempt to resolve the grievance with the company's representative.

(3) Where the foregoing discussions fail to resolve the matter of concern it shall be referred to the contractor's senior management representative and the appropriate full time union official, at which stage the parties shall then initiate steps to resolve the grievance as soon as possible.

(4) Whilst the steps in subclauses (1), (2) and (3) of this clause are being followed industrial action shall not be taken. A maximum period of five days shall be allowed for all stages of the discussions to be finalised.

(5) A party to this agreement may refer the matter to the Western Australian Industrial Relations Commission provided that any party reserves the right to refer an issue to the Western Australian Industrial Relations Commission at any time.

(6) The parties will give each other the earliest possible advice of any concern which may give rise to a grievance or dispute. All relevant facts shall be clearly identified and recorded throughout.

(7) The company will ensure that all practices applied during the operation of the procedure are in accordance with safe working principles.

11.—RATES OF PAY

The base rates for the purpose of this agreement are the rates prescribed in the Industrial Spraypainting and Sandblasting Award 1991 applicable to the company employees as at 23 April 1995.

The total wage increase applicable during the period of operation of this agreement is 15% phased in as per the following increments.

In accordance with the successful operation of this agreement and a continued commitment from all parties:

- In addition to an increase of 3% (which has already been introduced as at 24 April 1995) and a further wage increase of 1% (implemented from 1 July 1995).
- A third incremental wage increase of 4% will apply from the first pay period in January 1996.
- A fourth incremental wage increase of 3% will apply from the first pay period in July 1996.
- A fifth incremental wage increase of 4% will apply from the first pay period in January 1997.

12.—NO EXTRA CLAIMS

The parties agree to undertake a commitment that there shall not be any extra claims made during the life of this agreement.

These wage increases are dependant on an ongoing commitment to, and implementation of, the efficiencies detailed herein. Any additional/supplementary safety net adjustment(s)

arising from a decision of the Western Australian Industrial Relations Commission that may apply during the currency of this agreement is deemed to be absorbed within the wage rates specified herein.

The parties to this agreement shall be bound by the terms of the agreement for its duration.

13.—SIGNATORIES TO THE AGREEMENT

Signed for and on behalf of Novacoat Pty Ltd
G.J. Pore
Managing Director
28 February 1996

Signed for and on behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
K. Reynolds
State Secretary

RALPH M LEE (WA) PTY LTD ENTERPRISE BARGAINING AGREEMENT 1996.

No. AG 128 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ralph M. Lee Pty Ltd

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

No. AG 128 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

29 May 1996.

Order.

HAVING heard Mr D. Sproule on behalf of the Applicant and Mr P. Carter on behalf of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, 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 following schedule titled the "Ralph M Lee (WA) Pty Ltd Enterprise Bargaining Agreement 1996", signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 21st day of May 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Ralph M Lee (WA) Pty Ltd Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Application of Agreement
7. No Extra Claims
8. Objectives of Agreement
9. Dispute Procedure
10. Consultative Processes
11. Training
12. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13. Monitoring of Agreement
14. Payment of Wages
15. Injured Worker Rehabilitation
16. Wages
17. Signatories

3.—AREA AND SCOPE

This agreement shall apply to Ralph M Lee (WA) Pty Ltd and its approximately 200 employees, who are members or eligible to be members of the union in the classifications set out in Clause 14. —Wages and the Union and shall operate within the State of Western Australia.

4.—PARTIES BOUND

This agreement is made this 15th day of April 1996 between:

(1) Ralph M Lee (WA) Pty Ltd

(2) CEPU Engineering and Electrical Division WA

5.—DATE AND PERIOD OF OPERATION

This agreement shall operate from 1st January 1996 and shall remain in force until 31st December 1997 or its earlier cessation in accordance with subclause (2) of Clause 6.—Application of Agreement.

6.—APPLICATION OF AGREEMENT

(1) (a) Where the parties to this agreement are also parties to an agreement which applies to a specific project the parties agree to discuss whether the provisions of this agreement will apply to that project in lieu of the specific project agreement.

(b) If it is agreed that the specific project agreement applies then the conditions of this agreement shall not apply.

(c) If it is agreed that meaningful productivity increases can be achieved, but this agreement cannot be implemented in full, then wage increases available from this agreement may be introduced on a "pro rata"basis. The increases available from this agreement will be a maximum of those contained in Clause 13.—Wages.

(2) The parties agree that if, following a review of this agreement by the parties and the Consultative Committee, agreement is reached that this agreement places and continues to place Ralph M Lee (WA) Pty Ltd and its employees at a competitive disadvantage and productivity and flexibility have not improved, then Ralph M Lee (WA) Pty Ltd have the option of reverting to work under the award.

(3) No part of this agreement shall be used by the union, Ralph M Lee (WA) Pty Ltd, or its employees as evidence or example before any industrial tribunal or proceedings not directly concerned with work covered under this agreement.

(4) No part of this agreement shall be otherwise used by the union, Ralph M Lee (WA) Pty Ltd, or its employees as evidence or example before any industrial tribunal or any other contractor.

(5) (a) This agreement shall not apply to Ralph M Lee (WA) Pty Ltd or its employees engaged in contract work with Woodside Offshore Petroleum.

(b) Where a specific project or site agreement is applicable to work undertaken by Ralph M Lee (WA) Pty Ltd and the union are a party to that specific project or site agreement, the specific project or site agreement shall take precedence over this agreement.

(c) (i) Where a specific project or site agreement is applicable to work Ralph M Lee (WA) Pty Ltd is contracted to carry out, and Ralph M Lee (WA) Pty Ltd and the union are not parties to that specific project or site agreement, it is agreed that the parties will discuss the application of this agreement to that work.

(ii) Where the parties are unable to agree upon the applicability or otherwise of this agreement to the work both parties acknowledge the other party's legal rights to protect their respective interests.

(iii) Both parties have the option of suspending this agreement, effective immediately, provided that the suspension shall only extend to the application of this agreement to the work on the specific project or site by notice in writing.

(6) Pursuant to this agreement and its measures to achieve gains in productivity, efficiency and flexibility, Ralph M Lee (WA) Pty Ltd shall provide the rates of pay prescribed in Cl. 16—Wages which shall be paid in lieu of the minimum weekly rate provided for in the award.

(7) This agreement shall operate in conjunction with the Electrical Contracting Industry Award R 22 of 1978 (the award). Where any inconsistency exists between this agreement and the award, this agreement will take precedence to the extent of the inconsistency.

(8) The parties agree that registration of this agreement in the Western Australian Industrial Relations Commission will not prejudice either the Union or Ralph M Lee (WA) Pty Ltd right to claim, pursue and achieve an award or enterprise bargaining agreement in the Australian Industrial Relations Commission.

7.—NO EXTRA CLAIMS

(1) The employees and the union shall not pursue any extra claims in relation to the award, with the exception of future State Wage Decisions, for the life of this agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future safety net adjustments shall be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this agreement. Future safety net adjustments shall not increase the wage rates contained at Clause 16.—Wages.

8.—OBJECTIVES OF AGREEMENT

(1) The parties acknowledge their commitment to the principles of enterprise bargaining.

(2) The parties agree that as a result of this agreement, Ralph M Lee (WA) Pty Ltd need to achieve productivity improvements to continue to hold a competitive edge within the market place by:

(a) heightening awareness and acceptance of accountability levels of all in the contracting process within Ralph M Lee (WA) Pty Ltd operations;

(b) encouraging Ralph M Lee (WA) Pty Ltd employees to accept responsibility in helping manage the total project performance including that of subcontractors;

(c) developing concepts of best practice, continuous improvement and quality control to enhance productivity and efficiency;

(d) developing a co-operative and harmonious working environment in the enterprise;

(e) developing better employee management practices that promote shared concepts of skill formation, learning, teamwork, participation, flexibility and communication;

(f) introducing best practice procedures in workplace health and safety and personnel management;

(g) developing and following procedures to eliminate lost time and make better use of available working time, eg: start and finish at the designated workplace at normal start and finish times;

(h) establishing measures to ensure ordered relations exist between Ralph M Lee (WA) Pty Ltd and the union on Ralph M Lee (WA) Pty Ltd work sites;

(i) enhancing job satisfaction;

(j) improving Ralph M Lee (WA) Pty Ltd competitiveness to help improve job security.

(3) It is agreed that the measures in this agreement, properly implemented and carried out, will assist in the achievement of those objectives.

9.—DISPUTE PROCEDURE

Any questions, disputes or difficulties arising pertaining to any matter covered by this industrial agreement or the award or both shall be settled in accordance with Clause 27.—Grievance Procedure and Special Allowance of the award.

10.—CONSULTATIVE PROCESSES

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this agreement, are enhanced by genuine consultation between Ralph M Lee (WA) Pty Ltd and its employees.

(2) (a) A Consultative Committee (the Committee) may be established within Ralph M Lee (WA) Pty Ltd. The composition and size of the Committee shall be determined by the parties.

(b) The Committee will initially be chaired by Ralph M Lee (WA) Pty Ltd State Manager or nominee. A representative of the union may attend the meetings. A representative of the ECA may attend the meetings.

(3) (a) The role of the Committee is to act as a forum for consultation, guidance and advice between Ralph M Lee (WA) Pty Ltd and its employees on matters such as monitoring and reviewing:

(i) implementation of this agreement and its objectives;

(ii) determination of benchmarks, best practice and continuous productivity improvement;

(iii) the skills formation programme and ancillary training;

(iv) the productivity improvement programme;

(v) communication between Ralph M Lee (WA) Pty Ltd and its employees;

(vi) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(b) The Consultative Committee is a consultative and advisory group and it is recognised by all parties that final and overall accountability for company performance rests with Ralph M Lee (WA) Pty Ltd.

11.—TRAINING

(1) Ralph M Lee (WA) Pty Ltd acknowledge the changing pace of technology in the electrical contracting industry and the need for employees to understand those changes and have the necessary skill requirements to keep Ralph M Lee (WA) Pty Ltd at the forefront of the industry.

(2) The parties to this agreement recognise that in order to increase the efficiency, productivity and competitiveness of Ralph M Lee (WA) Pty Ltd, a commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(a) developing a more highly skilled and flexible workforce; and

(b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by Ralph M Lee (WA) Pty Ltd.

(3) It is agreed that a training programme be developed consistent with:

(a) the current and future skill needs of Ralph M Lee (WA) Pty Ltd;

(b) the size, structure and nature of Ralph M Lee (WA) Pty Ltd;

(c) the need to develop vocational skills relevant to Ralph M Lee (WA) Pty Ltd and the electrical contracting industry.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY & FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for Ralph M Lee (WA) Pty Ltd shall be performed in accordance with this agreement and with the award as varied by this agreement and in conjunction with, where applicable, other industry agreements.

(2) Flexibility of Hours, Breaks and RDOs.

It is agreed that employees will be flexible in the following areas:

(a) where it is agreed between Ralph M Lee (WA) Pty Ltd and the majority of affected employee(s) Ralph M Lee (WA) Pty Ltd may reschedule ordinary working hours;

(b) the spread of hours may be altered by agreement between Ralph M Lee (WA) Pty Ltd and the majority of employees in the plant or section(s) concerned.

(c) agreement to reschedule ordinary working hours and to alter the spread of hours shall not unreasonably be withheld;

(d) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of Ralph M Lee (WA) Pty Ltd in conjunction with the provisions

in paragraphs (1)(e) and (f) of Clause 11.—Hours of the Award;

(e) flexibility of rostering employees' day off:

It is agreed that when Ralph M Lee (WA) Pty Ltd wish to reschedule an RDO, Ralph M Lee (WA) Pty Ltd will endeavour to provide reasonable notice to the employee(s). RDOs may be substituted by agreement in accordance with the award, which agreement shall not unreasonably be withheld.

(3) Maintenance of Workplace

All employees are committed to ensure their workplace is maintained in a clean and safe condition.

(4) Overtime

(a) Overtime will be worked in accordance with Clause 12.—Overtime of the award. In particular the employees agree to strictly adhere to subparagraphs (2)(f)(i) and (ii) of Clause 12.—Overtime:

"(2)(f)(i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(2)(f)(ii) The union party to this award, or employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause."

(b) Overtime may be worked on an RDO weekend as required by Ralph M Lee (WA) Pty Ltd. Ralph M Lee (WA) Pty Ltd will endeavour to give employees who are required to work on an RDO weekend such prior notice as is reasonable in all the circumstances.

(c) Ralph M Lee (WA) Pty Ltd will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at Ralph M Lee (WA) Pty Ltd discretion, provided that this will not disadvantage Ralph M Lee (WA) Pty Ltd in any way.

(d) In conjunction with the roster system Ralph M Lee (WA) Pty Ltd will select the employees required to work overtime according to the needs of Ralph M Lee (WA) Pty Ltd and the particular project.

(e) When overtime has been scheduled and an employee has committed himself or herself to work overtime, such commitment must be honoured. Where an employee has a valid reason to be absent, in accordance with award provisions, the employee is obligated to advise Ralph M Lee (WA) Pty Ltd, as soon as possible prior to overtime commencement of that fact and the reasons therefor, so that alternative arrangements may be made.

(5) Place of Start and Finish Work

It is agreed that all employees will be dressed and ready to start work at their normal start time at the designated workplace and work will finish at their normal finish time and place. On construction work the workplace shall be deemed to be the nearest Ralph M Lee (WA) Pty Ltd compound or smoko shed.

(6) Footwear

It is agreed that employees who have been issued with safety footwear will have such safety footwear replaced on a fair wear and tear basis. There shall be no automatic re-issue of footwear where an employee is placed on a new site.

(7) Uniforms and Clothing

It is agreed that employees issued with Ralph M Lee (WA) Pty Ltd uniforms and clothing shall wear such items during all work hours and each employee shall maintain his/her uniform/clothing in a respectable condition as approved by Ralph M Lee (WA) Pty Ltd.

It is agreed that employees who have been issued with clothing will have such clothing replaced on a fair wear and tear basis. There shall be no automatic reissue of clothing where an employee is placed on a new site.

(8) Care of Ralph M Lee (WA) Pty Ltd Property

(a) It is agreed that employees will treat all property, plant and equipment owned or hired by Ralph M Lee (WA) Pty Ltd with due care and respect to ensure replacement is kept to a minimum. All property, plant and equipment shall be returned to the designated storage area each day.

(b) A tradesperson or apprentice shall replace or pay for any tools supplied by Ralph M Lee (WA) Pty Ltd if lost through his/her negligence. See paragraph (20)(b) of Clause 18.—Special Rates and Provisions of the award.

(c) It is agreed that all employees are committed to reducing the cost of maintenance and minimising theft and time spent looking for equipment not returned to its designated storage area. The target reduction in costs is 15% over two years from 20 October 1994.

(9) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of Ralph M Lee (WA) Pty Ltd materials and consumables is achieved and will exercise due care and precaution to prevent wastage. All employees are committed to identifying further ways in which wastage can be reduced. The target reduction in costs is 10% over two years from 20 October 1994.

(10) Quality Management

It is agreed that employees shall co-operate fully with the development and implementation of Ralph M Lee (WA) Pty Ltd quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by Ralph M Lee (WA) Pty Ltd. There will be a commitment to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(11) Daily Labour Reports

It is agreed that employees will take an active role in the production reporting and production strategy meetings by punctually and correctly filling in Ralph M Lee (WA) Pty Ltd daily labour reports.

(12) Co-operation Between Employees and Supervisors

(a) It is agreed that employees shall assist in the management of efficiency and production of sites by advising the supervisory staff at the earliest available opportunity if:

(i) it is anticipated that a material shortfall may occur, and if a shortfall does occur;

(ii) faulty hand tools are on site;

(iii) special equipment such as a scissor lift and scaffolds for height work are required;

(iv) production is likely to be delayed or is delayed by other trades;

(v) work is not being installed in accordance with the specifications or with SAA Wiring Rules.

(b) Employees will take an active role to ensure that sufficient quantities and correct types of materials are available at the jobsite to maximise time at the workface.

(c) Employees will take an active role in tool box meetings to eliminate safety hazards.

(13) Use of Expertise and Duties

(a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate licence to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licences when required to by Ralph M Lee (WA) Pty Ltd.

(b) Employees' duties shall include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.

(14) Suggestion Box

A suggestion box will be placed at each major site and in branch operations for employees to suggest ways Ralph M Lee (WA) Pty Ltd performance can be enhanced.

(15) Rest Period

(a) A rest period of ten minutes shall be allowed in accordance with the following:

(i) Subject to the provisions of this paragraph, a rest period of 10 minutes from the time of ceasing to the time of resumption of work shall be allowed each morning.

(ii) The rest period shall be counted as time off duty without deduction of pay and shall be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by an employee during the rest period but the period of ten minutes shall not be exceeded under any circumstances.

(iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.

(b) This arrangement may be altered to suit the convenience of Ralph M Lee (WA) Pty Ltd.

(16) Unauthorised Absences

(a) Ralph M Lee (WA) Pty Ltd shall:

(i) arrange an employee's ordinary hours of work which shall average 38 hours per week; and

(ii) select the method of implementation of the 38 hour week.

(b) An employee shall present himself or herself for duty and remain on duty during the ordinary hours of work.

(c) Ralph M Lee (WA) Pty Ltd shall be under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with:

(i) award provisions; or

(ii) an instruction from Ralph M Lee (WA) Pty Ltd that the employee may leave site without loss of pay.

(17) Safety Disputes

(a) Where a Ralph M Lee (WA) Pty Ltd employee is affected by a safety dispute an employee shall comply with Ralph M Lee (WA) Pty Ltd instructions to either:

(i) continue work when the area in which the employee is working is not affected by the condition giving rise to the dispute;

or

(ii) accept a transfer to work in an area of the site not affected by the condition giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with Ralph M Lee (WA) Pty Ltd instructions shall forfeit wages for time not worked.

(18) Inclement Weather (Wet or Hot)

(a) Where a Ralph M Lee (WA) Pty Ltd employee is affected by inclement weather an employee shall comply with Ralph M Lee (WA) Pty Ltd instructions to either:

(i) continue work when the area in which the employee is working is not affected by inclement weather; or

(ii) accept a transfer to work in an area of the site not affected by the inclement weather; or

(iii) accept a transfer from one site to another site not affected by inclement weather; or

(iv) leave the site without loss of pay.

(b) Where Ralph M Lee (WA) Pty Ltd requires an employee to traverse open ground Ralph M Lee (WA) Pty Ltd will provide the employee with protective clothing. Such clothing will remain the property of Ralph M Lee (WA) Pty Ltd and shall be returned to Ralph M Lee (WA) Pty Ltd. Employees shall take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

(c) An employee shall not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.

(d) An employee who does not comply with Ralph M Lee (WA) Pty Ltd instructions shall forfeit wages for time not worked.

(19) All Other Disputes

(a) Where a Ralph M Lee (WA) Pty Ltd employee is affected by any other dispute an employee shall comply with Ralph M Lee (WA) Pty Ltd instructions to either:

(i) continue work when the area in which the employee is working is not affected by the condition, situation or grievance giving rise to the dispute; or

(ii) accept a transfer to work in an area of the site not affected by the condition, situation or grievance giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with Ralph M Lee (WA) Pty Ltd instructions shall forfeit wages for time not worked.

(20) Movement of Material

It is agreed that employees will, where reasonably safe to do so, and in compliance with DOSHWA requirements, load and unload materials, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

(21) New Technology

It is agreed that employees will fully utilise all new technological advances implemented by Ralph M Lee (WA) Pty Ltd including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

(22) Work on Ladders

It is agreed that employees will work on ladders where they are required to do so and such work complies with the Occupational Health, Safety and Welfare Act.

(23) Safety Performance Targets

(a) Ralph M Lee (WA) Pty Ltd and employees are committed to the continuous improvement programme to improve our safety performance with our objective to reduce the number of safety incidents and eliminate lost time injuries.

(b) Ralph M Lee (WA) Pty Ltd and employees have the responsibility at all times to observe safe working procedures, to notify management of any potential hazards and to work in a manner that controls the risk of injury to themselves and other employees. This behaviour will be encouraged and employees will not be prejudiced by compliance. Ralph M Lee (WA) Pty Ltd will ensure that a positive attitude to this process is developed in supervisors, management and employees so that a continuous improvement is achieved in safety performance. Tool box meetings will be used as part of the mechanism for this continuous improvement.

(c) Ralph M Lee (WA) Pty Ltd and employees recognise that safety education and safety programmes are fundamental to the achievement of a safe and healthy working environment.

(d) Employees are committed to eliminate lost time injuries by participating in rehabilitation programmes and with the exception of extreme cases, the parties to this agreement are committed to the early and effective rehabilitation of employees who are unfortunate enough to suffer any incapacitation injury.

(e) The performance indicators shall be:

(i) maintain lost time frequency rates at 0;

(ii) a reduction and subsequent elimination of severity rates;

(iii) a reduction in safety incident rates; and

(iv) participation in the rehabilitation process

(22) Client Satisfaction

(a) The employees will take an active role in ensuring client satisfaction and that client relationships is important to the growth of Ralph M Lee (WA) Pty Ltd and its ability to offer continuing employment to its employees. All employees agree to treat customers with courtesy and respect and to consider the customers' interest in their actions.

(b) Ralph M Lee (WA) Pty Ltd and its employees recognise that a commitment to complete the project work on time and on budget is essential to the ongoing viability of the company and the prospects of long term employment of employees.

13.—MONITORING OF AGREEMENT

The parties to this agreement shall continually monitor the development of the agreement and shall review the effect of this agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this agreement places them at a disadvantage then the parties shall reconvene to resolve the issue.

14.—PAYMENT OF WAGES

Employees shall be paid by electronic funds transfer or, where an employer and employee so agree the employee may be paid by cash or cheque.

15.—INJURED WORKERS REHABILITATION

Our Company is actively involved in ensuring any injured employee is rehabilitated back to the workforce at the first reasonable opportunity. To ensure this policy is maintained employees who suffer an injury may be required to consult a company nominated doctor. This provision will in no way prevent an employee from consulting and being treated by his/her own personal doctor in the first instance.

16.—WAGES

The following wage rates shall apply upon registration of this agreement by the Western Australian Industrial Relations Commission in the first full pay period to commence on or after 1 January 1996, subject to the successful implementation of the principles contained within this document.

The rates of pay to apply to apprentices shall be the percentage as shown in the award ie: 39%, 51%, 67% and 79% of the relevant tradespersons EBA rate.

	Beginning 1st full pay period commencing on or after 1 Jan 1996	Beginning 1st full pay period commencing on or after 1 Jan 1996	Beginning 1st full pay period commencing on or after 1 Jan 1997	Beginning 1st full pay period commencing on or after 1 Jan 1997
Electronics Tradesperson	636.71	660.59	685.36	711.06
Electrician Special Class	570.06	591.44	613.62	636.63
Instrument Fitter Electrical Grade 2	578.84	600.55	623.07	646.43
Electrical Installer	542.43	562.77	583.87	605.77
Electrical Fitter	542.43	562.77	583.87	605.77
Instrument Fitter Electrical Grade 1	562.51	583.61	605.49	628.20
Linesperson Grade 1	532.43	562.77	583.87	605.77
Cable Jointer	542.43	562.77	583.87	605.77
Linesperson Grade 1	521.88	541.45	561.76	582.82
Electrical Assistant	459.59	476.83	494.71	513.26

17.—SIGNATORIES

For and on behalf of Ralph M Lee (WA) Pty Ltd

R G Hatherley
General Manager WA Division

W J Manlow
Witness

For and on behalf of CEPU Engineering and Electrical Division WA.

P Carter

L McLaughlan
Witness

ST JOHN OF GOD HOSPITAL MURDOCH (HSOA) CAREGIVER AGREEMENT 1995
No. AG 69 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

St John of God Hospital Murdoch
and
The Hospital Salaried Officers' Association of Western Australia.
No. AG 69 of 1996.

COMMISSIONER C.B. PARKS.

23 April 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 69 of 1996.

HAVING heard Ms M. Marchese on behalf of the first named party and Mr D. Hill on behalf of the second named party and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the document titled the St John of God Hospital Murdoch (HSOA) Caregiver Agreement 1995, filed in the Commission on 19 February 1996 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

ST JOHN OF GOD HOSPITAL MURDOCH (HSOA) CAREGIVER AGREEMENT 1995

CONTENTS

		Page
1.	Parties	3
2.	Area and Scope	3
3.	Term	3
4.	Replacement	3
5.	Interpretation	4
6.	Workplace Agreements	5
7.	Duties and Classification	5
8.	Separation	5
9.	Probation	6
10.	Time not worked	7
11.	Right of Transfer	7
12.	Confidentiality	7
13.	Part-time	7
14.	Casual	8
15.	Temporary and Fixed Term Appointments	8
16.	Hours	8
17.	Overtime	9
18.	Banked Hours	10
19.	On Call	10
20.	Rosters	11
21.	Meal and Meal Hours	12
22.	Accrued Time Off	12
23.	Salaries	13
24.	Payment of Wages	14
25.	Banked Hours on Termination	15
26.	Shift Work	17
27.	Calculation of Penalties	17
28.	Higher Duties	17
29.	Laundry and Uniforms	18
30.	Fares and Motor Vehicle Allowance	19
31.	Superannuation	19
32.	Annual Leave and Public Holidays	20
33.	Sick Leave	22
34.	Long Service Leave	24
35.	Parental Leave	24
36.	Bereavement Leave	25
37.	Study Leave	25
38.	Jury Service	25
39.	Time Off Without Pay	25
40.	Introduction of Change and Redundancy	26
41.	Time and Wages Record	28
42.	Interviews	29
43	Notices	30
44.	Deduction of Dues	30
45.	Single Bargaining Unit to Monitor Agreement	30
	Signatories to Agreement	31
	Schedule A—Salaries	32
	Schedule B—Salary Packaging	35
	Appendix	36

1.—PARTIES

The parties to this Agreement shall be St John of God Hospital Murdoch (a division of the St John of God Health Care System Inc.)("the hospital") and the Hospital Salaried Officers' Association of Western Australia (Union of Workers).

2.—AREA AND SCOPE

(1) This Agreement shall apply to all Caregivers eligible for membership of the Hospital Salaried Officers Association of Western Australia (Union of Workers) employed by the hospital throughout the State of Western Australia.

(2) Pursuant to s.41A(1a) of the *Industrial Relations Act* 1979 (WA), it is estimated that 87 Caregivers will be bound by this Agreement upon registration.

3.—TERM

The term of this Agreement shall be for a period of 2 years as from the beginning of the first pay period commencing after the 1st day of July, 1995.

4.—REPLACEMENT

(1) This Agreement cancels and replaces the *St John of God Hospital Murdoch Caregiver Agreement* 1994 AG 86 of 1993, to the extent that Agreement AG 86 of 1993 applied to all Caregivers eligible for membership of the Hospital Salaried

Officers Association of Western Australia (Union of Workers) employed by the hospital throughout the State of Western Australia.

(2) Notwithstanding the provisions of clause 3 of this Agreement, this Agreement shall continue to operate until it is replaced by a new Agreement.

(3) If a new Agreement has not been negotiated within three months after the expiry of the term of this Agreement and unless all parties agree to extend the negotiating period, the parties agree to have any outstanding issues arbitrated by the Western Australian Industrial Relations Commission or another agreed third party

(4) Provided that:

(a) the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the *Industrial Relations Act 1979*(WA).

(b) the parties shall review the Agreement should, as a result of movements in award rates of pay, the total wage prescribed by this Agreement for any classification fall below the relevant award safety net. Any such review shall be conducted in accordance with the State Wage Fixing Principles in operation at that time.

(c) the parties shall review the Agreement in the event of the hospital entering into an enterprise agreement with the Australian Nursing Federation.

5.—INTERPRETATION

In this Agreement;

(1) "Accrued Time Off" means paid time off accruing to a Caregiver resulting from an entitlement to the 38 hour week;

(2) "Banked Hours" means hours banked by a Caregiver as a result of the operation of annualised hours;

(3) "Caregiver" means an employee of the hospital;

(4) "casual" means a Caregiver engaged on an hourly basis with no guarantee of continual or additional employment. A casual shall not be continuously rostered for a period exceeding 4 weeks;

(5) "fixed term contract" refers to a contract of employment in which a Caregiver is engaged for a specific project either for the duration of that project or for a specific period of time.

Nothing in this subclause shall restrict the right of the hospital or the Caregiver to terminate the engagement within the specified term in accordance with the provisions of this Agreement.

(6) "ordinary rate" means the total rate of pay prescribed in Schedule A of this Agreement.

(7) "ordinary time earnings" means the ordinary rate and shift and weekend penalties.

(8) "part-time" refers to a permanent Caregiver with a guaranteed minimum number of hours (inclusive of holidays and leave) who is regularly employed to work less hours than those prescribed for full time Caregivers;

(9) "public holiday" means New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.

(10) "salary packaging" means the substitution of goods and/or services valued at their cost, for ordinary salary payable under this Agreement.

(11) "temporary" means a Caregiver engaged for a specific period not exceeding 12 months.

(12) (a) Where the provisions of this Agreement provide they may be varied by agreement between the hospital and the Caregiver, that agreement shall not be deemed to have been reached unless freely entered into by both parties. Nor shall a Caregiver be disadvantaged in any way by withholding agreement.

(b) Where the hospital seeks such agreement each Caregiver shall be made aware of their rights, and given reasonable opportunity to contact and seek representation from a Union representative.

(c) Any problem arising from the operation of this Agreement may be referred to the Single Bargaining Unit which shall endeavour to resolve the problem in accordance with clause 45 hereof.

(d) The meaning of "problem" for the purposes of clause 5 and clause 45 of this Agreement, shall include "question, disputes or difficulties."

6.—WORKPLACE AGREEMENTS

The hospital agrees for the term of this Agreement to be bound by the provisions of this Agreement and as such commits not to enter into Workplace Agreements under the *Workplace Agreements Act 1993* with Caregivers who would otherwise fall within the scope of this Agreement.

7.—DUTIES AND CLASSIFICATION

(1) The Caregiver will be required to work in accordance with his/her duty statement and the hospital's policies and procedures. The hospital may direct the Caregiver to carry out such duties as are within the limits of the Caregiver's skill, competence or training provided that such duties are not designed to promote deskilling.

(2) A Caregiver's salary classification shall be determined in accordance with the classification review system. The classification review system shall be determined by agreement between the parties from time to time.

8.—SEPARATION

(1) Hospital Giving Notice

(a) The contract of service may be terminated by the hospital on any day by giving to the Caregiver the required period of notice in writing and the contract shall expire at the end of that period of notice.

(b) The required period of notice shall be:

Caregiver's period of continuous service with the hospital	Period of notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The required period of notice is increased by one week if the Caregiver is over 45 years old and has completed at least 2 years continuous service with the hospital.

(c) Provided that the contract of service of a Caregiver engaged as a casual may be terminated by the hospital giving the Caregiver one hour's notice. Such notice need not be in writing.

(d) Payment in lieu of the required period of notice may be made by the hospital if the required notice is not given.

The hospital may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

(2) Caregiver Giving Notice

(a) The contract of service may be terminated on any day by the Caregiver giving to the hospital two weeks notice in writing and the contract shall expire at the end of that period of notice.

Where there is written agreement between the hospital and the Caregiver a longer period of notice up to and including four weeks may be required.

(b) Provided that the contract of service of a Caregiver engaged as a casual may be terminated by the Caregiver giving the hospital one hour's notice. Such notice need not be in writing.

(c) If a Caregiver fails to give the required notice or leaves during the notice period, the hospital may, at its discretion, deduct from any monies due to the Caregiver, an amount equal to ordinary time earnings for the period of notice not given.

(d) A Caregiver shall not be disadvantaged as a result of providing a longer period of notice than required by this clause.

(3) The Caregiver and the hospital may agree in writing upon a longer period of notice than prescribed in this clause.

(4) The required notice may be dispensed with by agreement in writing between the hospital and Caregiver.

(5) Nothing in this clause affects the hospital's right to dismiss a Caregiver without notice for serious misconduct which justifies instant dismissal.

Certificate of Service

(6) Where a Caregiver whose service terminates requests a certificate of service, a certificate signed by the hospital stating the name of the Caregiver, the period of service, whether the service was full time or part time and the classifications in this Agreement in which work has been carried out, shall be provided.

9.—PROBATION

The first three months of employment will be on a probationary basis during which time and notwithstanding the provision of Clause 8 hereof either party may terminate the contract by giving one weeks notice in writing (one hour in the case of casuals) or payment or forfeiture in lieu thereof.

The hospital shall provide the Caregiver with an appraisal of his or her performance during the probationary period.

10.—TIME NOT WORKED

The Caregiver shall not be entitled to payment for any period of unauthorised absence.

11.—RIGHT OF TRANSFER

The Caregiver shall be required to comply with any reasonable request to transfer to another suitable position or place of work.

12.—CONFIDENTIALITY

Information relating to the hospital, its customers or activities may not be released or divulged by the Caregiver to a third party other than in the proper performance of the Caregiver's obligations under this Agreement.

This shall not prevent the Caregiver from seeking representation by an accredited official of his or her union.

13.—PART-TIME

(1) A part-time employee shall be guaranteed a minimum number of hours per week averaged over a 12 month period.

(2) (a) A Caregiver appointed part-time shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which he/she is engaged only in the proportion which his/her ordinary weekly hours averaged over the qualifying period, bears to 40.

(b) A Caregiver appointed part-time shall be allowed annual leave, sick leave, bereavement leave and study leave in the same manner as full time employees. Payment for such leave shall be in the same ratio as his/her ordinary weekly hours, averaged over the qualifying period, bears to 40.

(c) Provided that where a Caregiver appointed part-time is not in receipt of accrued time off the divisor shall be 38.

(3) A Caregiver appointed part-time may by agreement work additional hours at ordinary rates subject to the normal rostering parameters of a full time Caregiver and the provisions of this clause.

Annualised Hours

(4) A Caregiver appointed part-time who works additional hours shall, subject to the provisions of subclause (6), bank those additional hours.

(5) Once a Caregiver appointed part-time banks 8 hours in accordance with subclause (4), he/she shall elect whether to:

(a) be paid out in each fortnightly pay period for any additional hours in excess of the 8 banked hours; or

(b) continue to bank additional hours.

The Caregiver must advise the hospital whether he/she wishes to be paid out, or to bank, the additional hours prior to completing the shift.

(6) Where a Caregiver appointed part-time is in debit as a result of the operation of annualised hours, he/she shall not accrue banked hours until the debit is cleared.

14.—CASUAL

(1) A casual shall be paid 1/40th of the total rate prescribed in Clause 23 of this Agreement, for each hour worked, plus 25% additional loading.

(2) A casual shall not receive any of the leave entitlements prescribed in this Agreement.

15.—TEMPORARY AND FIXED TERM APPOINTMENTS

(1) A Caregiver appointed as a temporary or pursuant to a fixed term contract shall accrue and be paid the same benefits as a permanent Caregiver unless otherwise specified.

(2) Where a temporary contract exceeds 6 months the hospital shall give consideration to granting permanency.

16.—HOURS

(1) A Caregiver shall have no fixed hours of duty provided that:

(a) The ordinary hours of work for a full-time Caregiver shall not exceed 2086 hours per annum (inclusive of holidays and leave).

(b) The ordinary hours of work for a part-time Caregiver shall average not less than the minimum weekly number of hours which that Caregiver has been guaranteed.

Such hours shall be averaged over a 12 month period and shall not exceed 2086 hours per annum (inclusive of holidays and leave).

(c) The ordinary hours of work for a Caregiver who does not accrue time off in accordance with the provisions of clause 22(6) of this Agreement shall not exceed 1982 per annum (inclusive of holidays and leave).

(2) Ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the hospital to meet its needs.

(3) Ordinary hours shall not exceed 96 in any fortnight.

(4) Ordinary hours may not be rostered over more than 6 consecutive days except by agreement between the Caregiver and the hospital.

(5) (a) Ordinary hours shall not be worked over more than 20 days in a four week cycle unless there is agreement between the Caregiver and the hospital.

Provided that a Caregiver may be required to work up to 21 days in a four week cycle in order to make up a debit (where the debit has not resulted from mismanagement of the roster).

(b) Where ordinary hours are worked over more than 20 days in a four week cycle the Caregiver shall be involved in the setting of the roster.

(c) The operation of this subclause shall be reviewed after 12 months.

(6) A minimum of two days off duty shall be taken consecutively unless otherwise agreed between the employee and the employer.

(7) Ordinary hours shall not exceed 10 in any shift.

Provided that a shift of 12 ordinary hours may be rostered by agreement between the Caregiver and the hospital.

(8) Broken shifts shall not be rostered but may be worked where a Caregiver is called in to work at short notice either by agreement or as a result of being placed on call.

(9) (a) The roster shall in each case provide for a 10 hour break between shifts.

(b) A Caregiver may agree to forego a 10 hour break between rostered shifts provided that the shortfall (ie. the difference between the rostered break and 10 hours) shall be recorded and the Caregiver shall be entitled to take twice that amount of time as paid time off. Such time off shall be taken at the end of the following shift unless otherwise agreed between the hospital and the Caregiver.

(c) Provided that this subclause shall not apply where a Caregiver agrees to work additional hours at short notice.

(10) A Caregiver shall not be rostered to work a shift of less than 3 hours duration.

17.—OVERTIME

(1) Time worked in excess of 10 hours a day, 96 hours a fortnight or 2086 per annum shall be deemed overtime and shall be paid for at time and a half for the first two hours and double time thereafter.

(2) A Caregiver may be required to work reasonable overtime.

(3) In the case of a Caregiver who does not accrue time off in accordance with the provisions of clause 22(6) of this Agreement, time worked in excess of 10 hours a day, 96 hours a fortnight or 1982 hours per annum shall be deemed overtime and shall be paid for at time and a half for the first two hours and double time thereafter.

(4) Provided that by agreement between the Caregiver and the hospital a shift of 12 ordinary hours may be rostered without incurring overtime.

(5) (a) Where a Caregiver and the hospital so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which the Caregiver is entitled.

(b) Such time off shall be taken at a time (or times) agreed between the hospital and Caregiver.

18.—BANKED HOURS

(1) A Caregiver who at the end of an accruing year has banked hours to his/her credit may elect:

(a) to be paid for those hours at ordinary rates; or

(b) by agreement with the hospital, to roll those credits over into the subsequent accruing year.

(2) Where a Caregiver is in debit at the end of an accruing year:

(a) the debit shall be cancelled; and in addition

(b) if the Caregiver is otherwise in receipt of accrued time off in accordance with clause 22 of this Agreement, he/she shall be credited with accrued time off at the rate of .05 of an hour for each hour of the debit.

19.—ON CALL

(1) For the purposes of this Agreement a Caregiver is on call when he or she is required by the hospital to remain at his or her private residence or any other mutually agreed place as will enable the hospital to readily contact him or her during the hours for which he or she has been placed on call.

A Caregiver is also on call when required to carry a mobile telephone or beeper and to remain within a specified range of the hospital.

(2) A Caregiver who is rostered to be on call at such a place as prescribed in subclause (1):

(a) from Monday to Friday shall receive an allowance of $12.00;

(b) on a Saturday shall receive an allowance of $18.00;

(c) on a Sunday, public holiday or any other day on which the Caregiver is not rostered on duty shall receive an allowance of $21.00;

Provided that only one allowance shall be payable in any period of 24 hours.

(3) The hospital shall provide a Caregiver placed on-call with a mobile telephone or beeper. Where the hospital fails to provide a mobile telephone or beeper the allowance prescribed in paragraph (a) of subclause (2) hereof shall be $18.00.

(4) A Caregiver rostered to be on call spanning two days over which different on call allowances apply, shall receive a payment which is equal to the allowance payable for the day attracting the higher allowance.

(5) The Caregiver shall not be required to remain on call whilst on leave or the day before commencing leave unless by mutual agreement between the Caregiver and the hospital.

Call In

(6) A Caregiver who is on-call and who is called in to work shall be paid a minimum of three hours pay at double time. Such work shall be deemed overtime.

(7) Where a Caregiver who is on call is called in to work and works for more than 4 hours he/she shall be entitled to an 8 hour break before commencing his/her next rostered shift without deduction of pay.

(8) A Caregiver who is on call but who remains at work following the completion of a rostered shift shall be paid at double time for any additional work performed. Such additional work shall be deemed overtime.

Caregiver Not On Call

(9) A Caregiver who is not on-call, but who is called in to work by agreement with the hospital in place of a Caregiver who is on call, shall be paid a minimum of three hours pay at the appropriate shift or weekend penalty rate, and in addition $12.00.

20.—ROSTERS

(1) A roster of working hours shall be posted in a convenient place where it can be readily seen by each Caregiver concerned.

(2) The roster shall be open for inspection by an accredited representative of the Union at all reasonable times.

(3) The roster shall be posted at least 7 days before it comes into operation.

(4) (a) The roster may be altered at the hospital's discretion if the hospital's requirements render such alteration necessary provided that:

(i) a Caregiver is entitled to 48 hours notice of a requirement to come in to work;

(ii) a Caregiver is entitled to 12 hours notice where a shift is cancelled or varied;

The notice referred to in this paragraph may be dispensed with by agreement between the Caregiver and the hospital.

(b) A Caregiver who has commenced a shift is entitled to complete that shift unless otherwise agreed between the Caregiver and the hospital.

(5) Each Caregiver shall have access to shift sheets on an ongoing basis.

21.—MEAL AND MEAL HOURS

(1) (a) Meal breaks shall be a minimum of 30 minutes and a maximum of one hour (except by agreement) and subject to subclause (2) of this clause shall not be counted as time worked.

(b) The Caregiver shall not be required to work for more than 6 hours consecutively without a meal break.

(2) Where the Caregiver is required to be on duty or available at the hospital during his/her meal break, the Caregiver shall be paid at ordinary rates. Provided that the time when the Caregiver is on duty or available but not working shall not be counted as time worked for the purposes of Clause 17 of this Agreement.

(3) One fifteen or two seven minute tea breaks shall be allowed during each shift and shall be taken when convenient to the hospital without deduction of pay for such time.

(4) A Caregiver who has not been notified the previous day or earlier that he or she is required to attend work at a time when a meal is usually taken shall be provided with such a meal.

22.—ACCRUED TIME OFF

(1) Entitlement

(a) A Caregiver (other than a casual) shall accrue an entitlement to time off at the rate of .05 of an hour for each ordinary hour worked to a maximum of 12 days (96 hours) off in each 12 month period.

(b) A Caregiver shall not accrue an entitlement to time off during the first 4 weeks of annual leave, long service leave, any period of unpaid leave or any absence on workers compensation leave in excess of one calendar month.

Accrual shall continue during any other period of leave (including any additional annual leave) prescribed by this Agreement.

(2) Taking Accrued Time Off

Where the Caregiver has accrued a sufficient entitlement, the accrued time off may be taken:

(a) in a minimum period of one week made up of 5 consecutive accrued days off in conjunction with a period of annual leave or at a time mutually acceptable to the Caregiver and the hospital; or

(b) as single day absences at a time suitable to the hospital and subject to 48 hours notice given to the Caregiver; or

(c) at the request of the Caregiver, and by agreement with the hospital, in periods of less than one day; or

(d) at any other time agreed between the Caregiver and the hospital provided that:

(i) the hospital shall, subject to its operational requirements, make every reasonable endeavour to accommodate the wishes of the Caregiver; and

(ii) the hospital shall allow the time off to be taken in the 12 months following the year of accrual.

(3) Rate of Pay

Accrued Time Off shall be paid at the ordinary rate.

(4) Termination

A Caregiver who at the time of termination has accrued time off to his/her credit shall be paid for those hours at ordinary rates.

(5) Pay Out of Entitlements

(a) When a Caregiver proceeds on parental leave, the hospital may pay the Caregiver for any accrued time off then standing to his/her credit.

(b) A Caregiver may at any time, by agreement in writing with the hospital, be paid for some or all of the accrued time off standing to his/her credit in lieu of taking the time off.

A Caregiver shall not otherwise be paid for accrued time off without actually taking the time off.

(6) A Caregiver may be paid a rate of pay using a divisor of 38 hours per week in lieu of the provisions of this clause:

(a) where the Caregiver is guaranteed no more than 16 hours or two shifts per week; or

(b) at the request of the Caregiver and by agreement with the hospital. Provided that the Caregiver may withdraw his/her agreement by providing two weeks notice in writing.

23.—SALARIES

(1) The base weekly rate payable to Caregivers under this Agreement and the conditions pertaining to appointment and progression are prescribed in Schedule A.

(2) Subject to subclause 22(6) of this Agreement, the hourly rate for a Caregiver shall be calculated by dividing the weekly rate by 40.

(3) At the request of a Caregiver and by agreement between the hospital and the Caregiver, a Caregiver may be provided with a salary package in lieu of the ordinary salary prescribed in Schedule A of this Agreement.

The terms and conditions of salary packaging are prescribed in Schedule B.

24.—PAYMENT OF WAGES

(1) A full time Caregiver shall be paid in each fortnightly pay period:

(a) (i) as for 80 ordinary hours (irrespective of the number of ordinary hours actually worked); or

(ii) where the Caregiver does not accrue time off in accordance with clause 22—Accrued Time Off of this Agreement—as for 76 ordinary hours (irrespective of the number of ordinary hours actually worked);

(b) for any overtime worked; and

(c) any penalty payments arising from work performed in that pay period.

(2) A Caregiver appointed part-time shall be paid in each fortnightly pay period:

(a) as for his/her guaranteed ordinary hours (irrespective of the number of ordinary hours actually worked);

(b) for any additional hours worked in the pay period for which the Caregiver has elected to be paid out in accordance with clause 13(5) of this Agreement;

(c) for any overtime worked; and

(d) any penalty payments arising from work performed in that pay period.

(3) A Caregiver appointed on a casual basis shall be paid in each fortnightly pay period on the basis of the number of hours actually worked.

(4) Wages shall be paid fortnightly by electronic funds transfer into one or two accounts nominated by the Caregiver held at any major bank, building society or credit union.

Any costs associated with the establishment by the Caregiver of such an account and of the operation of it shall be borne by the Caregiver.

(5) Where payment is not made within the nominated time the hospital shall make every reasonable endeavour to rectify the matter without further delay. Where the problem is within the control of the hospital it shall be rectified within 24 hours.

(6) Each Caregiver 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 hours worked including overtime;

(c) the number of ordinary hours for which payment has been made;

(d) the total number of hours, if any, which as a result of the annualising of hours, the Caregiver is in credit or debit;

(e) the gross wage;

(f) the net wage;

(g) the hospital funded superannuation component;

(h) any allowances paid;

(i) any deductions made including details of any salary sacrifice;

(j) the composition of any annual leave payment;

(k) the composition of any termination payment;

(l) accrued annual leave;

(m) accrued days off.

(7) Upon termination of employment, the hospital shall pay to the Caregiver all monies earned by or payable to the Caregiver before the Caregiver leaves the hospital or the same shall be forwarded to the Caregiver by post on the next working day following termination. Provided that:

(a) Where the employment is terminated without notice in accordance with this Agreement the hospital shall, as soon as reasonably possible, forward by post all monies earned by or payable to the Caregiver;

(b) By agreement the monies earned by or payable to the Caregiver may be paid by electronic funds transfer into the Caregiver's account(s).

25.—BANKED HOURS ON TERMINATION

(1) A Caregiver who at the time of termination has banked hours to his/her credit shall be paid for those hours at ordinary rates.

(2) A Caregiver who at the time of termination is in debit shall have the monies otherwise payable on termination reduced by an amount equivalent to payment at ordinary rates for the number of hours in respect of which the Caregiver is in debit. Provided that:

(a) the number of hours for which a deduction is made shall not exceed 20 or 1.2 times the Caregiver's guaranteed weekly hours (to a maximum of 48), whichever is the greater;

(b) Caregiver Giving Notice

(i) A Caregiver who gives written notice of termination shall be given the opportunity of working additional hours during the notice period to enable the Caregiver to reduce the debit prior to termination.

(ii) In such a case the hospital shall offer the Caregiver a minimum of 8 additional hours in each week of the notice period.

(iii) Subject to its requirements, the hospital may offer the Caregiver further additional hours

within the parameters for working ordinary hours prescribed in this Agreement.

(iv) Any additional hours worked during the notice period shall reduce the maximum number of hours for which a deduction may be made in accordance with paragraph (a) hereof.

(v) For the purposes of this paragraph the Caregiver may provide a longer period of notice than required by clause 8—Separation of this Agreement;

(c) Hospital Giving Notice

(i) A Caregiver who is given notice of termination by the hospital may be required to work additional ordinary hours during the notice period to enable the Caregiver to reduce the debit prior to termination.

(ii) This requirement shall be subject to the parameters for working ordinary hours prescribed by this Agreement.

(iii) Any additional hours worked during the notice period shall reduce the maximum number of hours for which a deduction may be made in accordance with paragraph (a) hereof.

(iv) Where the hospital fails to provide the Caregiver with such additional hours as will completely offset the maximum number of hours for which a deduction may be made in accordance with paragraph (a), no deduction shall be made.

(v) For the purposes of this paragraph the hospital may provide a longer period of notice than required by clause 8—Separation of this Agreement;

(d) No deduction shall be made where:

(i) a Caregiver's employment is terminated by the hospital with payment in lieu of notice; or

(ii) where a Caregiver's employment has been terminated by the hospital on the grounds of redundancy in accordance with clause 39 of this Agreement; or

(iii) where the required notice period has been dispensed with by agreement in writing between the hospital and the Caregiver.

26.—SHIFT WORK

(1) (a) The loading on the ordinary rates of pay for a Caregiver who works an afternoon shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on weekdays shall be 15%

(b) The provisions of paragraph (a) of this subclause do not apply to a Caregiver who on any weekday commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.

(c) The loading on ordinary rates of pay for a Caregiver who works a shift between the hours of 6.00 pm and 7.30 am on a weekday shall be 15%.

(2) (a) A Caregiver rostered to work ordinary hours between midnight Friday and midnight on the following Saturday shall be paid a loading of 50% on actual hours worked during this period.

(b) A Caregiver rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday shall be paid a loading of 75% on actual hours worked during this period.

(3) Where a Caregiver works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause.

(4) Where the ordinary hours of work span 12.00 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend shall be made by 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.

27.—CALCULATION OF PENALTIES

Where the Caregiver works hours which would entitle him or her to payment of more than one of the penalties payable in accordance with the overtime, on call, shift and weekend penalties, or public holiday provisions of this Agreement, only the highest of any such penalty shall be payable.

In the case of casuals any such penalty shall be in addition to the casual loading.

28.—HIGHER DUTIES

(1) A Caregiver who is capable of performing and does perform all duties of a position which attracts a higher rate of pay than that which he or she usually performs shall be entitled to the higher rate whilst so engaged.

(2) When a Caregiver performs some, but not all, of the duties of the position a rate of pay less than the rate the position normally attracts can be paid on agreement between the hospital and Caregiver. In such circumstances the Caregiver will be provided with written advice of the additional duties and confirmation of the agreed rate of remuneration prior to assuming such duties.

(3) When a Caregiver assumes higher duties or responsibilities due to a special project or similar short term process and such higher duties or responsibilities are not imported from an existing post an appropriate rate of remuneration shall be determined by agreement between the hospital and the Caregiver. Where practicable the rate of remuneration shall be set prior to the commencement of the special project or process.

(4) Provided that payment for higher duties shall not apply to a Caregiver required to act in another position while the incumbent is taking accrued time off for a single day or less in accordance with Clause 22 of this Agreement.

(5) Any dispute as to the appropriate rate of remuneration payable pursuant to this clause may be referred to the HSOA Classification Review Committee.

29.—LAUNDRY AND UNIFORMS

(1) (a) Where the hospital requires a uniform to be worn, an adequate supply of such uniforms shall be provided free of cost to the Caregiver on engagement.

(b) Thereafter uniforms will be replaced on an 'as required' basis provided that:

(i) no uniform shall be replaced within 18 months of the date of issue;

(ii) the Caregiver when a new uniform is issued shall be required to return the replaced uniform.

(c) Uniforms shall at all times remain the property of the hospital and must be returned to the hospital on termination.

A failure to return hospital uniforms may lead to a delay in the processing of any termination payment and to the hospital deducting the cost of the uniforms from any monies owing to the Caregiver.

(d) Uniforms shall not be worn other than in the course of, and in travelling to and from, employment.

(2) The cost of laundering uniforms shall be met by the Caregiver. The additional payment prescribed in Schedule A includes an amount to compensate for this requirement.

(3) Caregivers shall be responsible for the provision of appropriate clean and tidy footwear.

(4) The provisions of this clause shall not detract from the hospital's obligation pursuant to section 19 of the *Occupational Health Safety and Welfare Act 1984-1987* to provide Caregivers with adequate personal protective clothing and equipment where it is not practicable to avoid the presence of hazards at the workplace.

30.—FARES AND MOTOR VEHICLE ALLOWANCE

(1) A Caregiver required to work outside the hospital during his or her normal working hours shall be paid any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) hereof.

(2) A Caregiver required and authorised to use his or her own motor vehicle in the course of his duties shall be paid an allowance of not less than 43.5 cents per kilometre.

(3) (a) The rate prescribed in subclause (2) shall be automatically adjusted in accordance with the rate applicable to travel in the metropolitan area (over 1600cc—2600cc) prescribed in the Public Service General Conditions of Service and Allowances Award No. PSA A4 of 1989.

(b) Any adjustment to the rate prescribed in subclause (2) shall operate from the date of the order varying the above award.

(4) Nothing in this clause shall prevent the hospital and the Caregiver making other arrangements as to car allowance not less favourable to the Caregiver.

31.—SUPERANNUATION

(1) The hospital shall contribute on behalf of the Caregiver in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.

(2) Contributions shall at the option of the Caregiver be paid into either:

(a) the Health Employees' Superannuation Trust Australia fund; or

(b) the National Catholic fund.

(3) Contributions into the nominated fund shall be paid monthly.

(4) Contributions shall continue to be paid on behalf of a Caregiver in receipt of payments under the Workers Compensation and Assistance Act.

(5) Salary Packaging

(a) A Caregiver may elect in writing to receive a superannuation benefit in lieu of part of the salary to which he or she is otherwise entitled under this Agreement.

(b) The salary package shall remain in force until terminated by mutual agreement or by either the hospital or the Caregiver providing one calendar month's notice.

32.—ANNUAL LEAVE AND PUBLIC HOLIDAYS

Entitlement

(1) (a) Each Caregiver shall after the completion of each 12 months continuous service be entitled to four weeks annual leave.

(b) The entitlement accrues *pro rata* on a weekly basis.

(c) In paragraph (a), "service" shall not include any period of unpaid leave other than the first 3 months of unpaid sick leave and the first month of workers' compensation leave.

Rate of Pay

(2) (a) The Caregiver shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the Caregiver would have received as his or her payment at the time of taking the leave and, in addition, any shift and weekend penalties which the Caregiver would have received had the Caregiver not proceeded on annual leave.

(b) Where it is not possible to calculate the shift and weekend penalties the Caregiver would have received, the Caregiver shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.

(c) Provided that the Caregiver when proceeding on annual leave shall not be paid less than the sum of:

(i) the Caregiver's ordinary rate of wage for the period (ie excluding shift and weekend penalties); and

(ii) a loading of 17.5% in respect of all periods of annual leave other than the periods relating to public holidays (ie to which the Caregiver is entitled under subclauses 9 and 13 hereof).

Timing of Payment

(4) The Caregiver is to be paid for a period of annual leave at the time payment is made in the normal course of employment, unless the Caregiver requests in writing that he or she be paid before the period of leave commences in which case the Caregiver is to be so paid.

Provided that, where annual leave is paid in advance, payment for time worked may be adjusted in the fortnightly pay period following the period of annual leave.

Termination

(5) If a Caregiver's employment terminates, the Caregiver shall be paid a pro rata entitlement (at the rate prescribed by subclause (2) hereof) in respect of each completed week of service for which annual leave has not already been taken. Provided that:

(a) Leave loading shall not apply to pro rata leave on termination but shall apply (in accordance with subclause (2) hereof) to leave resulting from a completed year of service.

(b) Caregivers to whom subclause (11) hereof applies shall be paid for such additional days leave as have accrued under those subclauses at the date of termination.

Taking Annual Leave

(6) (a) The Caregiver may, with the approval of the hospital, be allowed to take the annual leave prescribed by this clause before the completion of twelve month's continuous service.

(b) The annual leave prescribed in this clause may be split into portions by mutual agreement between the hospital and the Caregiver.

(c) When the Caregiver requests that the annual leave be split into portions the hospital shall make every reasonable endeavour to accommodate the wishes of the Caregiver.

(d) Where the hospital and Caregiver have not agreed when the Caregiver is to take annual leave:

(i) the hospital shall allow the leave to be taken in the 12 months following the year of accrual; and

(ii) the hospital shall give the Caregiver at least 2 week's notice of the period of time when it will be convenient to the hospital for the Caregiver to take the leave.

Compaction

(7) A Caregiver who during a qualifying period towards an entitlement of annual leave was employed continuously on both a full-time and part-time basis, or a part-time basis only, may elect to take a lesser period of annual leave calculated by converting the part-time service to equivalent full-time service.

Such election is to be made in writing by the Caregiver and approved by the hospital.

Cashing In

(8) A Caregiver to whom subclause (11) of this clause applies or who has otherwise accrued in excess of 4 weeks annual leave may elect to be paid when proceeding on annual leave an amount equivalent to the value of his or her additional leave entitlement in lieu of taking the additional leave.

Such election is to be made in writing by the Caregiver and approved by the hospital.

Public Holiday Occurring During Annual Leave

(9) A Caregiver shall be entitled to a day's leave in lieu of a public holiday, without deduction of pay, in respect of a public holiday which occurs during the Caregivers' annual leave.

Day Observed in Lieu of Public Holiday

(10) Where any public holiday prescribed by this Agreement falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or Monday, such holiday shall be observed on the next succeeding Tuesday. Provided that:

(a) a day observed in lieu of the holiday may be appointed by proclamation published in the *Gazette* under the *Public and Bank Holidays Act 1972*;

(b) another day may be observed in lieu of the holiday by agreement between the Caregiver and the hospital.

Shift Work

(11) A Caregiver rostered to work ordinary hours on Sundays and/or public holidays shall be entitled to additional annual leave as follows:

(a) if 35 ordinary shifts on such days have been worked—one week

(b) if less than 35 ordinary shifts on such days have been worked the Caregiver shall be entitled to have one additional day's leave (to a maximum of five days) for each seven ordinary shifts so worked.

Public holidays

(12) A Caregiver not required to work on a day solely because that day is a public holiday or day observed in lieu thereof, shall be entitled to leave for the number of hours which he or she would otherwise be rostered to work on that day without deduction of pay.

(13) Where the Caregiver is rostered to work ordinary hours on a public holiday or day observed in lieu thereof, he or she shall be entitled to ordinary rates of pay and a loading of 50% for the actual time worked together with an equivalent period of time off to be added to the period of annual leave.

33.—SICK LEAVE

(1) A Caregiver shall accrue 10 rostered shifts paid sick leave per annum.

(2) The entitlement shall accrue pro rata on a weekly basis.

(3) A Caregiver who is unable to attend work on the grounds of personal ill health or injury or on account of the illness or injury of a family member residing with the Caregiver, is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the Caregiver was rostered to work on that day.

Provided that:

(a) subject to subclause (4) hereof, the payment shall not exceed payment for 10 rostered shifts per annum; and

(b) where such payment exceeds the Caregiver's accrued entitlement, the excess may be offset against any future accrual or against monies otherwise payable to the Caregiver at the point of separation;

(4) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(5) A Caregiver shall advise the hospital as soon as reasonably practicable and if possible prior to the commencement of the shift of, the inability to attend work, the nature of illness or injury and the estimated duration of absence.

(6) A Caregiver is allowed a maximum of four days absence without a medical certificate in any one accruing year provided that a medical certificate must be provided for any absence of more than two consecutive days.

(7) A Caregiver who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to

(a) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more.

(b) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by hospital and Caregiver or shall be added to the next period of annual leave.

(c) 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 32—Annual Leave and Public Holidays shall be deemed to have been paid with respect to the replaced annual leave.

(8) Paid leave may be withheld if the illness or injury is the result of the Caregiver's own misconduct.

(9) Where a Caregiver receives payment under this clause and subsequently receives payments in respect of the same period under the *Workers Compensation and Assistance Act 1981*, the Caregiver shall reimburse to the hospital the payments made under this clause and the hospital shall reinstate the Caregiver's sick leave or other entitlements accordingly.

Use of Banked Hours Where Sick Leave Entitlement Exceeded

(10) A Caregiver who has exceeded his or her entitlement to paid sick leave under this clause and who has banked hours to his/her credit may elect to be paid for those hours during any period of unpaid sick leave.

34.—LONG SERVICE LEAVE

(1) The long service leave provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive as updated from time to time, are hereby incorporated in and shall be deemed to be part of this Agreement, providing that long service leave shall not accrue on workers' compensation leave in excess of one month.

(2) Provided that the leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this clause:

Where an employee has completed at least 10 years' service the amount of leave shall be:

(a) in respect of 10 years service so completed—eight and two thirds weeks leave;

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

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

(i) by his/her death;

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

in respect of the number of years' service with the employer completed since he/she last became entitled to an amount of long service leave, a proportionate amount on the basis of eight and two thirds weeks for 10 years service.

(3) By agreement between the hospital and Caregiver, a part time Caregiver or a Caregiver whose ordinary hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the hospital.

35.— PARENTAL LEAVE

Employees shall be entitled to unpaid parental (and adoption) leave in accordance with Division 5 of Part VIA of the *Industrial Relations Act* 1988 (Cth).

36.—BEREAVEMENT LEAVE

(1) On the death of a spouse or de facto spouse, child or step-child, parent or parent in law, brother, sister, or any other person who immediately before that person's death lived with the Caregiver as a member of the Caregiver's family, the Caregiver is entitled to bereavement leave, without loss of ordinary time earnings, of up to two (2) days.

(2) Bereavement leave shall at the discretion of the Caregiver be taken at any time up to and including the two days following the day of the funeral.

(3) Payment for such leave may be subject to the Caregiver providing proof of the death, satisfactory to the hospital.

(4) Bereavement leave is not to be taken where the Caregiver is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the Caregiver to be with a dying relative.

37.—STUDY LEAVE

Paid study leave of up to two days per annum will be granted at the discretion of the hospital where the course of study is relevant to the Caregiver's work.

38.—JURY SERVICE

(1) Caregivers summoned for jury service and giving prior advice to their manager will be granted paid leave subject to the procedures set out herein.

(2) Caregivers requesting time off for jury service must notify their manager on receipt of notice to attend.

(3) Application for leave of absence for jury service must be made on the standard Application for Leave form with a copy of the notice to attend attached.

(4) On presentation of proof of appearance payment of salary will be made at the ordinary time through the pay roll system.

(5) The hospital will claim reimbursement from the Court.

39.—TIME OFF WITHOUT PAY

Time off without pay for whatever purpose may be granted by agreement between the hospital and the Caregiver.

In any such case the number of hours guaranteed to the Caregiver as a result of the operation of annualised hours shall be reduced accordingly. This clause shall apply to unpaid sick leave.

40.—INTRODUCTION OF CHANGE AND REDUNDANCY

(1) Interpretation

In this clause:

"Caregiver" does not include a Caregiver engaged on a casual or temporary basis or on a fixed term contract;

"redundant" means being no longer required by the hospital to continue doing a job because the hospital has decided that the job will not be done by any Caregiver.

For the purposes of this clause, an action of the employer has a "significant effect" on an employee if:

(a) there is to be a major change in the composition, operation or size of, or skills required in, the hospital's workforce that will affect the Caregiver; or

(b) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the Caregiver; or

(c) the guaranteed hours of the Caregiver's work are to significantly increase or decrease; or

(d) the Caregiver is required to be retrained; or

(e) the Caregiver is to be required to transfer to another job or work location; or

(f) the Caregiver's job is to be restructured; or

(g) the Caregiver's income is decreased.

(2) (a) Caregiver to be Informed

Where the hospital has decided to:

(i) take action that is likely to have a significant effect on a Caregiver; or

(ii) make a Caregiver redundant,

the Caregiver is entitled to be informed by the hospital, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

(b) Discussions to occur

The hospital shall thereafter hold discussions with the Caregiver affected as to:

(i) the likely effects of the action or the redundancy in respect of the Caregiver; and

(ii) measures that may be taken by the Caregiver or hospital to avoid or minimise a significant effect.

Provided that the hospital shall not be required to disclose confidential information the disclosure of which may seriously harm the hospital's interests.

(3) Union to be informed

Where the hospital has made a definite decision to introduce major changes that are likely to have significant effects on one or more Caregivers, the hospital shall notify and hold discussions with the union.

(4) Severance Pay

(a) In addition to the period of notice prescribed in Clause 8 of this Agreement, for ordinary termination, a Caregiver whose employment is terminated on the grounds of redundancy 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	1 weeks
2 years but less than 3 years	3 weeks
3 years but less than 4 years	5 weeks
4 years but less than 5 years	7 weeks
5 years but less than 6 years	9 weeks
Thereafter	1 week's additional pay for each additional year of service

"Weeks Pay" means the ordinary weekly rate of wage for the Caregiver concerned.

(b) For the purpose of this clause continuity of service shall not be broken on account of:

(i) any absence from work on account of personal sickness or accident for which a Caregiver is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the hospital; or

(ii) any absence with reasonable cause, proof whereof shall be upon the Caregiver; or

(iii) any absence on approved leave without pay.

Provided that in the calculation of continuous service under this subclause any time in respect of which a Caregiver is absent from work except time for which a Caregiver is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this agreement shall not count as time worked.

(c) Service by the Caregiver with a business which has been transmitted from one hospital to another and the Caregiver's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1-4 shall also constitute continuous service for the purpose of this clause.

(4) Caregiver Leaving During Notice:

A Caregiver whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the Caregiver remained with the hospital until the expiry of such notice. Provided that in such circumstances the Caregiver shall not be entitled to payment in lieu of notice.

(5) Alternative Employment:

The hospital, 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 hospital obtains acceptable alternative employment for a Caregiver.

(6) Leave for Job Interviews

(a) A Caregiver who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of 8 ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.

(b) A Caregiver who claims to be entitled to paid leave under paragraph (a) shall, at the request of the hospital, be required to produce reasonable proof of attendance at an interview or the Caregiver shall not receive payment for the time absent.

(7) Notice to Commonwealth Employment Service:

Where a decision has been made to terminate Caregivers in circumstances of redundancy, the hospital shall, subject to the agreement of the Caregivers concerned, notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the Caregivers likely to be affected and the period over which the terminations are intended to be carried out.

41.—TIME AND WAGES RECORD

(1) A time and wages record shall be kept by the hospital and shall, upon reasonable notice being given, be available for inspection by an accredited representative of the union.

(2) The record shall contain the following information:

(a) the name and address of each Caregiver subject to this Agreement;

(b) the date on which each Caregiver commenced employment with the hospital;

(c) the classification and increment of the Caregiver;

(d) whether the Caregiver is employed on a full time, part-time or casual basis;

(e) the commencing and finishing time of work each day;

(f) the total number of ordinary hours and the total number of overtime hours worked each day;

(g) the number of ordinary hours for which payment was made;

(h) the total number of hours, if any, which as a result of the annualising of hours, the Caregiver is in credit or debit;

(i) the wages and allowances paid to each Caregiver in each pay period and any deductions therefrom.

(3) The officer of the union shall be permitted reasonable time to inspect the record and, if required, take an extract or copy of any of the information contained therein.

42.—INTERVIEWS

(1) An accredited representative of the Union shall be entitled to enter the hospital and interview a Caregiver subject to the following:

(a) on arrival at the workplace the union representative shall seek permission to enter the premises from the Chief Executive Officer or his appointed representative.

(b) agreement between the union representative and the CEO or his appointed representative shall be sought as to where and subject to what conditions the Caregiver may be interviewed or work inspected.

(2) Failing agreement on the foregoing, the following shall apply:

(a) On giving prior notice in writing or by telephone to the CEO or his appointed representative, or failing that person being available, the most senior person in charge of the establishment, an accredited representative of the union shall be entitled to enter the hospital to interview a Caregiver at a time and place agreed between the union and the CEO or his appointed representative.

(b) Where there is no agreement as to time and place, the union representative shall have the right, upon prior notice to the CEO or his representative, or most senior person in charge of the establishment, to interview Caregivers during the recognised meal period at the place where the meal is usually taken.

(3) If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the CEO or, his appointed representative or senior person in charge.

43.—NOTICES

The hospital shall provide a notice board in a place where it may be conveniently and readily seen for the posting of union notices.

44.—DEDUCTION OF UNION DUES

(1) The hospital and the union have reached agreement on the payroll deduction of union dues.

(2) The hospital may withdraw from the agreement:

(a) by the giving of 3 months notice in writing; or

(b) in the event of industrial action.

45.—SINGLE BARGAINING UNIT TO MONITOR AGREEMENT

(1) The single bargaining unit which negotiated this Agreement shall meet not less than once every 3 months during its term for the purpose of monitoring, and resolving problems arising from, its application.

(2) Meetings may be called by any party providing a minimum of 7 days notice. This notice may be dispensed with by agreement.

(3) Particular attention shall be paid to the application of Clauses 16 to 22 inclusive of the Agreement.

(4) In resolving problems arising from the application or interpretation of the Agreement the single bargaining unit shall endeavour to reach a consensus.

(5) Where consensus is not able to be reached the parties may jointly or individually refer the problem to the Western Australian Industrial Commission or to an agreed third party for the purposes of conciliation and, if required, arbitration.

(6) Provided that the Agreement may only be varied by arbitration for the purpose of removing ambiguity or uncertainty.

Signatories to Agreement

Signed for and on behalf of
ST JOHN OF GOD HOSPITAL MURDOCH:
(Signed by G Palmer) (Seal affixed)
In the presence of:
(Signed by R Kerr)

Signed for and on behalf of
HOSPITAL SALARIED OFFICERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS):
(Signed by M Hartland)
President
In the presence of:
(Signed by C Potkura)
(Seal affixed)
(Signed by D Hill)
Secretary
In the presence of:
(Signed by C Potkura)

SCHEDULE A—SALARIES

(1) This Schedule prescribes the base and total weekly rates payable to Caregivers covered by this Agreement

The base rate is the rate calculated by reference to the particular classification. The total rate (which is an all purpose rate) includes the following enterprise bargaining increases:

(a) first 5% operative from the first pay period beginning on or after 1 January 1994;

(b) second 5% operative from the first pay period beginning on or after 1 July 1995;

(c) third 5% operative from the first pay period beginning on or after 1 July 1996.

(2) (a) Unless otherwise specified progression for all classifications for which there is more than one wage point, shall be by automatic annual increments, subject to a satisfactory performance appraisal.

(b) Any disagreement in relation to the payment of an annual increment may be referred to the WA Industrial Relations Commission for determination.

(c) Progression between levels shall be by appointment, subject to the hospital's requirements.

(3) The base hourly rate of wage for each Caregiver shall be calculated by dividing the weekly rate by 40.

Provided that in the case of a Caregiver not in receipt of accrued time off the base hourly rate shall be calculated by dividing the weekly rate by 38.

(4) No Caregiver, who at the date of this Agreement was in receipt of a rate of wage higher than that prescribed herein for his/her classification of work, shall have that rate reduced by the operation of this Agreement.

(5) Caregivers in receipt of a base salary in excess of $42,204 per annum may by agreement in writing with the hospital receive an all in rate in full satisfaction of the monetary entitlements prescribed by this Agreement. Provided that the rate shall not when viewed objectively, and having regard to the whole of the Caregiver's terms and conditions of employment, be less favourable to the Caregiver than the entitlements otherwise available under this Agreement.

(6) The following annual salaries shall apply to Caregivers covered by this Agreement:

	Base Rate	Total Rate First Pay Period 1.7.95	Total Rate First Pay Period 1.7.96
	$	$	$
(a) Level 1			
1.1	19,322	21,303	22,368
1.2	19,622	21,633	22,715
1.3	20,021	22,073	23,177
1.4	20,343	22,428	23,550
(b) Level 2			
2.1	20,343	22,428	23,550
2.2	20,997	23,149	24,307
2.3	21,647	23,866	25,059

	Base Rate	Total Rate First Pay Period 1.7.95	Total Rate First Pay Period 1.7.96
	$	$	$
(c) Level 2A			
2A.1	21,647	23,866	25,059
2A.2	22,295	24,580	25,809
2A.3	22,946	25,298	26,563
(d) Level 3			
3.1	22,946	25,298	26,563
3.2	23,597	26,016	27,316
(e) Level 3A			
3A.1	24,346	26,841	28,184
3A.2	24,864	27,413	28,783
(f) Level 4			
1.1	24,864	27,413	28,783
1.2	25,629	28,256	29,669
(g) Level 5			
5.1	26,533	29,253	30,715
5.2	27,236	30,028	31,529
(h) Level 6			
6.1	27,975	30,842	32,385
6.2	29,154	32,142	33,749
(i) Level 7			
7.1	29,771	32,823	34,464
7.2	30,696	33,842	35,534
(j) Level 8			
8.1	31,647	34,891	36,635
8.2	32,998	36,380	38,199
(k) Level 9			
9.1	33,702	37,156	39,014
9.2	34,669	38,223	40,134
(l) Level 10			
10.1	35,664	39,320	41,286
10.2	36,688	40,449	42,471
(m) Level 11			
11.1	38,660	42,623	44,754
11.2	40,124	44,237	46,449
(n) Level 12			
12.1	42,204	46,530	48,856
(o) Level 13			
13.1	43,317	47,757	50,145
13.2	44,727	49,312	51,777
(p) Level 14			
14.1	46,188	50,922	53,468
(q) Level 15			
15.1	48,323	53,276	55,940
15.2	50,073	55,205	57,966

SCHEDULE B—SALARY PACKAGING

The terms and conditions of salary packaging shall be subject to the following conditions:

(a) the agreement, the terms and conditions of which shall be in writing and signed by both the employer and employee, shall detail the components of the total salary package.

(b) a copy of the agreement shall be made available to the Caregiver and a copy shall be open for inspection by an accredited representative of the union in accordance with Clause 41 of this Agreement.

(c) the hospital must inform the Caregiver in writing of how the benefits are costed in money terms;

(d) the cost of any benefit will take into account the cost of any Fringe Benefit Tax (FBT) payable and an imputed cost to take account of the non-deductibility of FBT and other non-deductible benefits;

(e) the salary package shall not increase the total cost of employment;

(f) the Caregiver shall be entitled to inspect details of payments and transactions made under the terms of this Agreement;

(g) subject to subclauses (i) and (j) hereof the configuration of the salary package shall remain in force for the period agreed between the Caregiver and the hospital; and

(h) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the hospital and the Caregiver, any unused amount may be carried forward to the next period or paid as salary which will be subject to usual taxation requirements;

(i) during the agreed period the hospital or the Caregiver may request a review of the package in the event that its cost or benefits are materially affected by changes in tax rulings or legislation. If agreement is unable to be reached the matter may be referred to the Western Australian Industrial Relations Commission for conciliation and/or arbitration; and

(j) notwithstanding the provisions of this Schedule the salary package may be terminated by mutual agreement or by either party providing one calendar month's notice or three calendar month's notice where the package includes the provision of a motor vehicle. Where the full amount allocated to a specific benefit has not been utilised it shall be paid as salary subject to the usual taxation requirements.

(k) The menu of items that may be packaged shall be those agreed by the parties from time to time.

APPENDIX

ST JOHN OF GOD HOSPITAL MURDOCH

St John of God Hospital Murdoch is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Hospital Murdoch is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Hospital Murdoch has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

St John of God Hospital Murdoch will arrange conditions of employment, "Employment Relationships" in accordance with the following "Principles of Employment Relationships."

PRINCIPLES FOR EMPLOYMENT RELATIONSHIPS BASED ON FIDELITY TO OUR HERITAGE

August 1993

1. Positive employment relationships are essential for the successful provision of health care. Recognition of the rights and duties of the hospital and each Caregiver are required for fairness and mutual accountability. [Justice]*

2. The work of all Caregivers is valued equally in the Mission and operation of the System. (This includes the work of those who provide direct patient care and those whose work enables these hands-on Caregivers to function effectively.) [Respect]*

3. Behaviours in the workplace must demonstrate respect for the basic orientation of the Mission, Philosophy and Cultural Values of the hospital. [Respect]*

4. In decisions related to clinical provision of health care, the expert knowledge and experienced judgements of health care professionals are acknowledged in their individual areas of competency as we work in collaboration with each other. [Respect, Justice, Excellence]*

5. The hospital recognises the different cultures and faith traditions of our Caregivers. It respects and values these differences and strives to learn from the richness of this diversity. [Hospitality, Respect]*

6. Opportunities for employment, career development and other pathways to growth are open to all people competent for the positions available throughout the hospital. [Hospitality, Compassion, Respect, Justice and Excellence]*

7. The hospital recognises the right of Caregivers to form associations to engage in collective actions, to negotiate various benefits for their members and to work for a better society. This does not exclude the Caregiver's right to choose individual negotiations when appropriate. [Respect, Justice]*

8. Decision making, planning and policy formation related to the work of Caregivers will be participative processes involving relevant stake-holders. Due processes are established to attend to grievances, injuries and other concerns. [Hospitality, Compassion, Respect, Justice and Excellence]*

9. Each Caregiver is expected to be committed to person centred care, to continual improvement of the quality of services and to the requirements of the hospital's Mission, Vision and Goals as described in their employment contracts. [Hospitality, Compassion, Respect, Justice and Excellence]*

10. Each Caregiver will be involved in ongoing learning. [Justice, Excellence]*

11. Caregivers are entitled to fair compensation for their work and they will share in the benefits of their work. [Hospitality, Justice, Excellence]*

12. Each Caregiver will contribute to quality patient care and to the common good of all by just and honest performance of the duties of their individual position. [Hospitality, Justice, Excellence]*

(* The Core Cultural Value(s) most relevant to each principle is noted in square brackets [ ].)

CAREGIVER EMPLOYMENT AGREEMENT

Involvement in this Agreement results in mutual commitment to the following:

St John of God Hospital Murdoch:

1. The provision of fair employment conditions.
2. Maintenance of safe working environments.
3. Opportunities for growth and development for each Caregiver.
4. Resources to facilitate optimum work processes and quality of services.
5. Participation in continual improvement of all work processes.
6. Provision of information and training to enable each Caregiver to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
7. Non requirement of Caregivers to perform duties outside their competence.
8. Provision of a regular cycle of appraisal and review of performance and developmental needs.
9. Involvement of Caregivers as participants in the general functioning of the workplace.

Each Caregiver:

1. Provision of an honest day's work in accordance with the relevant Position Description.
2. Positive participation in the desired organisational culture of the hospital.
3. Involvement in learning that will facilitate personal and professional growth and development.
4. Observance of appropriate safety and security regulations.
5. Observance of the hospital's policies and procedures.
6. Participation in a regular cycle of appraisal and review of performance and developmental needs.

SWAN CHRISTIAN EDUCATION ASSOCIATION INC. (ENTERPRISE BARGAINING) AGREEMENT 1995
No. AG 124 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Swan Christian Education Association Inc.

No. AG 124 of 1996.

Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1995

COMMISSIONER A.R. BEECH.

11 June 1996.

Order.

HAVING heard Ms T. Howe and Mr A. Campbell on behalf of the applicants, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1995 be registered in accordance with the following Schedule commencing on and from the 23rd day of May 1996.

(Sgd.) A. R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objectives
10. Salary Rates
11. Agreed Efficiency Improvements
12. Dispute Resolution Procedure
13. Other Matters
14. No Further Claims
15. No Precedent
16. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between the Swan Christian Education Association Inc. (SCEA) and The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA) a registered organisation of employees (the parties).

The Swan Christian Education Association Inc. administers Beechboro Christian School, Emmaus Christian School, Kalamunda Christian School, Midland Christian School, Mundaring Christian School and Swan Christian High School (the schools).

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all teachers employed by the SCEA who are covered by the provisions of the scope of the Independent Schools' Teachers' Award 1976 (the award).

(2) There are approximately 76 employees covered by this agreement.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on the 23rd May 1996 and shall apply until 30th June 1996.

6.—EXPIRATION OF AGREEMENT

On the expiration of this agreement, and in the absence of the registration of a subsequent enterprise agreement, the provisions of this agreement shall apply until such time as a new agreement is registered and takes effect.

7.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award.

Where there is any inconsistency between this agreement and the award this agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with representatives of teachers in the schools and with representatives of the SCEA.

9.—OBJECTIVES

In reaching this agreement the parties have recognised the need to:

(1) Consolidate and develop further, initiatives arising out of the award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will ensure that SCEA and its staff become genuine participants and contributors to the schools' aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. SCEA and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the school and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

(4) Ensure that all teaching staff meet and continue to meet the Christian criteria for membership of SCEA as it applies to members with voting rights.

10.—SALARY RATES

On and from the 1st January 1995 the minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the award shall be:

Step	Salary ($)
1	23,142
2	24,548
3	25,953
4	27,576
5	29,090
6	30,388
7	31,685
8	33,307
9	35,091
10	36,551
11	37,849
12	39,471
13	41,093

In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed by this agreement.

11.—AGREED EFFICIENCY IMPROVEMENTS

(1) Senior Teacher Levels 2 and 3 Positions

(a) Notwithstanding prior agreement reached by the parties to the award, the application by the ISSOA relating to the establishment of the Senior Teacher Level 3 position shall not be proceeded with.

(b) The duties and responsibilities of the Senior Teacher Level 2 position are to be determined through negotiation by the Independent Schools Industrial Affairs Consultative Committee.

(2) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers employed for five days or less may be engaged by the day or half day. A half day is determined as the hours usually worked in the schools prior to or immediately following the lunch break.

(3) First Teaching Appointment

A teacher appointed to his/her first teaching position who, at the end of the initial twelve months, is deemed by the school not to have developed adequate teaching skills, may be appointed as a temporary teacher subject to paragraph (2) of Item 2—Induction of Appendix 1 of the award.

(4) Long Service Leave

Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, from 1st January 1995 a teacher who has completed eight years' continuous service with SCEA shall be entitled to take ten weeks' long service leave on full pay, corresponding with a completed term.

(5) Promotional Positions

While maintaining the promotion structure described in the award, the school shall have the discretion to adapt this structure to meet its educational needs. The normal process of appointment to promotional positions will be followed.

12.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as any questions, disputes or difficulties arising out of this agreement.

(2) The objectives of this dispute resolution procedure are:

(a) to promote the resolution of grievances and disputes by measures based on consultation, co-operation and discussion;

(b) to avoid industrial confrontation within SCEA and its schools;

(c) to avoid interruption to the performance of work and the consequential loss of services and wages; and

(d) to avoid disharmony with SCEA as a result of unresolved grievances and disputes.

(3) The following procedure shall apply to the resolution of any dispute:

(a) If any employee or group of employees is dissatisfied with any matter which relates to their employment by SCEA then the employee or group of employees (as the case may be), accompanied by a representative, if desired, shall meet and discuss the grievance with their immediate superior with a view to reaching agreement regarding the matter.

(b) If, following the meeting contemplated by paragraph (a) of this subclause, the grievance is not resolved, then, if the immediate superior referred to in paragraph (a) of this subclause is not the Principal (of the school concerned), the employee or group of employees, along with a representative, if desired, shall meet and discuss the grievance with the Principal with a view to reaching agreement regarding the matter.

(c) If the matter remains unresolved then the employee or group of employees, along with a representative, if desired, shall meet and discuss the grievance with the Chairman of the School Council with a view to reaching agreement.

(d) If there has not been satisfactory resolution of the grievance, any party to the dispute may refer the dispute to the Advisory Committee of SCEA for resolution.

(e) If there has not been a satisfactory resolution of the grievance and the dispute arises out of this agreement, any party to the dispute may refer the dispute to the Western Australian Industrial Relations Commission or the Industrial Relations Court of Australia for resolution.

(f) While this procedure is being followed work shall continue as normal.

13.—OTHER MATTERS

The parties agree to discuss such matters that are of relevance to either the school or the staff.

14.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims with respect to salaries or conditions during the period of this agreement unless they are consistent with the State Wage Case Principles.

15.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the school or not.

16.—SIGNATORIES

Signed A. Campbell
D. Markham
Swan Christian Education Association Inc.

Signed T.I. Howe
Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

---

UNITED CONSTRUCTION ALCOA OPERATIONS LOCAL SERVICES CONTRACTS AND ASSOCIATED PROJECTS ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 117 of 1996.

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 117 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

13 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr A. Carpenter 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 following schedule titled the "United Construction Alcoa Operations Local Services Contracts and Associated Projects Enterprise Bargaining Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 9th day of May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as United Construction Alcoa Operations Local Services Contracts and Associated Projects Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

		Page No.
1.	Title	1
2.	Arrangement	1
3.	Introduction	1
4.	Application of the Agreement	1
5.	Parties Bound	2
6.	Date and Operation of Review	2
7.	Relationship with Parent Award and other Agreements/Orders	2
8.	Aims and Objectives	3
9.	Strategies for Achieving Aims of Agreement	4
10.	Work Practices and Conditions of Employment	5
11.	Grievance Procedure/Dispute Resolution	11
12.	No Extra Claims Commitment	12
13.	Redundancy	12
14.	Rates of Pay	12
	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 as well as building on the previous Enterprise Bargaining Agreement negotiations by the parties. United Construction Pty Ltd 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 United Construction Pty Ltd 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 United Construction 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 at the Alcoa Operations of WA. The work is that which is performed pursuant to the respective Local Service Contracts and Associated Projects only (ie work performed outside of the scope of the respective Local Service Contracts and Associated Projects is specifically NOT covered by this Agreement).

It is estimated that the number of employees who will be bound by this agreement upon ratification is 40.

5.—PARTIES BOUND

The Parties to this Agreement are:

(1) United Construction Pty Ltd ,

(2) All employees of United Construction Pty Ltd employed at Alcoa Kwinana, Pinjarra or Wagerup Refineries and Alcoa Huntley, Del Park, Jarrahdale or Willowdale Mine sites pursuant to the provisions of the respective Local Service Contracts under the classifications specified in Clause 13—Rates of Pay, of this Agreement who are members or are eligible for membership of the Automotive, Food, Metals, Engineering Printing and Kindred Industries Union of Workers—Western Australia (MEWU).

(3) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

6.—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall operate from 23 March 1996 and continue in operation for a period of 2 years from the date of ratification . It is acknowledged that the previous United Construction Alcoa Kwinana and Pinjarra Core Crew Enterprise Bargaining Agreements expired in January 1996.

(2) The Monitoring Committee (as referred to in Clause 9 herein—Strategies for Achieving the Aims of the Agreement) will begin a process of review of the Agreement three months prior to its expiry.

(3) 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.

(4) The parties to this Agreement may apply to cancel the Agreement with effect from 2 years from the date of ratification, 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 No. 13 of 1965, the Metal Trades (United Construction Pty Ltd) Order No. 1952 of 1990, Metal Electrical Building Trades (Pinjarra

and Kwinana Refineries and Huntley, Del Park and Jarrahdale Mine Sites) Construction Order No. 1310 of 1993, as amended and the Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Minesite) Construction Order No.1241 of 1995.

(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.

(3) This Agreement incorporates the previous United Construction and Alcoa Kwinana and Pinjarra Core Crew Enterprise Agreements of 1993 as well as the United Construction Alcoa Kwinana.

8.—AIMS AND OBJECTIVES

(1) United Construction aims to ensure the continued and long term viability of its operations, thus providing job security for its employees. United Construction also aims to provide a quality and committed service to the metal fabrication 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 United Construction.

To facilitate the achievement of this aim, the parties agree to pursue the following objectives:

(a) to have a well trained, dedicated, motivated and highly competent workforce and management team;

(b) to continually improve safety in the workplace and the personal awareness of safety and correct procedures such that lost time injuries are trending towards zero and medical treatment injuries are substantially reduced;

(c) to equal or better quality standards as required by client with substantive reductions in rework and repairs within each project;

(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 United Construction to provide a service of total quality and total commitment to Alcoa.

The Refineries are sites wherein United Construction strive to maintain a multi-skilled and loyal workforce. It is intended that this Agreement will allow all parties to further enhance the skills and attributes of the United Construction Alcoa Local Service Contracts and Associated Projects Workforce.

To support this aim, it has been agreed between United Construction and its employees that their joint aim is to be the preferred contractor to Alcoa and to maintain and enhance the multi-skilled aspects of the Alcoa Refineries.

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, employee relations and other general proposals aimed at improving United Construction's operations at Alcoa Refineries and Mine Sites and;

(c) to utilise effectively the intellectual resources, skills and experience of members of the United Construction Local Service Contracts and Associated Projects workforce, and represent and consider the interests of both employees and management in rational discussions.

(3) The parties to this Agreement, as outlined under Clause 5, will endeavour to start negotiations for the next Enterprise Agreement, some three months prior to the expiry date of this Agreement. The parties agree that the negotiations will take into account a number of factors which include, but not limited to the following:

(a) Community standards.

(b) Review of the productivity and efficiency enhancements contained in this agreement of the results obtained.

(c) Improvement of productivity and efficiency enhancement where satisfactory results have not been obtained during the life of this agreement.

(d) New initiatives for further productivity and efficiency measures.

(e) Employees' Rates of Pay to be reviewed.

(f) Customer's needs and guidelines.

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 United Construction's operations is dependent on workforce and management commitment to the organisation. All employees will therefore, where possible, 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 absences in that year if any, shall be accompanied by such certificate.

The parties agree that employees unable to attend work due to illness will notify the site within the first three hours of start of their shift. This will allow site management to ensure that all employees have arrived at work or are accounted for.

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 not more than 50% of the award entitlement.

(b) Hours of Work

(i) The daily ordinary hours of work at the Alcoa Refineries shall be 8 hours, resulting in a 40 hour, 5 day week (inclusive of an RDO accrual). Any hours worked in excess of 8 hours in any day, Monday to Friday, shall be paid at overtime rates.

(ii) The daily work schedule in relation to ordinary hours shall be:

7:00am —	Commencement of work
9:30am—9:40am (Pinjarra and Wagerup) —	Smoko Break
10:00am—10:10am (Kwinana) —	Smoko Break

12:30pm—1:00pm (Pinjarra and Wagerup) —	Lunch Break, unpaid
1:00pm—1:30pm (Kwinana) —	Lunch Break, unpaid
3:06pm —	Completion of Ordinary Hours

Should the lunch break commencement be delayed on any day due to unforseen, emergency or work circumstances, such delay will be via agreement with the employees involved.

(iii) A maximum of 5 minutes is allowed before an employee finishes his workday for the purpose of securing tools and clean-up of the workplace.

(iv) The total daily ordinary time paid from commencement to completion of work is 7 hours and 36 minutes (7.6 hours).

(v) Lunch and smoko breaks may be staggered or altered by management in order to meet operational requirements.

(c) Rostered Days Off (RDO)

(i) Employees will accrue a Rostered Day Off (RDO) at a rate of one every 28 days.

(ii) The RDO's shall be taken at a time mutually agreed between the employer 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.

(iii) RDO's may be accrued to a maximum of six days and a minimum of two consecutive days (RDO's) shall be taken at any time.

(iv) RDO's shall be taken in accordance with the above and will not be paid out in lieu.

(v) 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).

(vi) The same day off shall not be allowed for all or the majority of employees.

Target—To allow the United Construction Alcoa Operations to operate as normal, Monday to Friday, excluding public holidays. To allow United Construction to provide a service of continuous availability of labour 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.

(d) Workforce Flexibility

(i) 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.

(ii) 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 provided that this action does not attempt to replace the jobs of employees covered by this Agreement.

(iii) Overtime—Subject to Clause 14—Overtime, of the Metal Trades (General) Award No. 13 of 1965, employees are required to work reasonable overtime at the direction of management. All hours worked in excess of 8 hours in any one day shall be paid at overtime rates.

Notification of the requirement to work overtime 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 Alcoa that allows for increased job satisfaction and associated improvements in productivity.

(iv) Self-supervision—In keeping with the overall aims and objectives of this Agreement, and as a reflection of United Construction's faith in the ability and dedication of its 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 United Construction's operations and for optimal job satisfaction and personal development.

Target—Reduce the numbers of supervisors, checkers and support personnel through increased self supervision and quality awareness by employees at source.

(v) Workload fluctuations

In an effort to enhance the flexibility and efficiency of United Construction's Alcoa 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 as 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 4 weeks accumulated annual leave, then the employer can request that part or all of the excess be taken provided it is a minimum of 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 with the employee.

(vi) Training

United Construction is committed to helping its employees to attain higher levels of skill and competency in areas that benefit the company. The following areas have been identified as potential areas of focus:

* Technical
* Interpersonal communications
* Safety
* English
* Job Instructions
* Quality of work

vii) Flexibility of Labour Hire

Whilst it is United Construction's normal practice to employ labour directly, due to peaks

and troughs in the nature of the work, United Construction 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.

(e) Best Practice

The parties agree to assess and implement methods by which "best practice" techniques involving optimal flexibility and efficiency may be introduced. Areas of focus include:

(i) 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 program 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.

(ii) Use of Consumables—Employees will reduce the levels of consumables used. Consumables include, but are not limited to: safety glasses; gloves; tools; welding equipment; ear plugs; safety boots; grinding disks; steel markers; 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.

(iii) Comfort Support—The provision of tea, coffee, milk and sugar is to be maintained, provided this provision continues to be sensibly utilised.

(iv) 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.

(v) 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 at the refineries.

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 work.

(f) Communications

The parties agree to take steps to improve and enhance communication between employees and management/supervisors through:

* Tool Box Talks
* Management Report Back Meetings with all employees
* Monitoring Committee Meetings
* Suggestion Systems
* Noticeboards
* Newsletters/Bulletins

(g) Union Meetings

Meetings between the workforce representatives and the management of United Construction will continue to be held at times mutually convenient to both parties.

Local Issues: Meetings to report on local United Construction Pty Ltd issues will continue to be held at times convenient to the Company and employees. It has been 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 United Construction Alcoa Refineries and Minesites to operate productively and consistently.

11.—GRIEVANCE PROCEDURE/DISPUTE RESOLUTION

(1) Where a question, dispute or difficulty 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 question, dispute or difficulty remains unresolved after the process described in subclause (1) of the clause has been followed, the union delegate shall discuss and attempt to resolve the dispute with the on site project manager of United Construction.

(3) If the matter remains unresolved, it shall be referred to a senior management representative of United Construction and the appropriate full-time union official. The parties shall then initiate steps to resolve the question, dispute or difficulty as soon as possible.

(4) While the steps outlined in subclauses (1), (2) and (3) of this clause are being followed, no industrial action shall be taken. A minimum of seven (7) working days is allowed for discussions in step (3) above to solve any dispute.

(5) If, after step (3), the question, dispute or difficulty is still not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission.

(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 question, dispute or difficulty. All relevant facts will be recorded and clearly identified throughout.

(7) No bans or limitations may be placed 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 at the Refineries.

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 United Construction Pty Ltd or not.

(5) The terms of this Agreement have resulted from extensive negotiations relating to productivity enhancements that specifically relate to the United Construction operations under the Local Service Contracts of Alcoa Operations and thus cannot be used as a precedent elsewhere.

13.—REDUNDANCY

Clause 14 of Metal Trades General Award Part II shall apply.

14.—RATES OF PAY

In specific acknowledgment of the productivity and efficiency enhancements targeted with the successful operation

of this Enterprise Agreement and a continued commitment from all parties, wage rates of employees covered by this agreement shall be increased by a total of 15% across the term of this agreement. Such increases will be granted in non—cumulative instalments as detailed in subclause (2) of the clause.

i) WAGE STRUCTURE: All purpose rate per week (38 Ordinary Hours)

Column 1: Paid 6% increase effective from the date of agreement (23/3/96) payable from the first full pay period from the date of ratification.

Column 2: Paid 1½ % increase in the first full pay period on or after 6 months from the operative date.

Column 3: Paid 4½ % increase in the first full pay period on or after 12 months from the operative date.

Column 4: Paid 3% increase in the first full pay period on or after 15 months from the operative date.

Metals Award Classification	Current Rate $	Column 1 $	Column 2 $	Column 3 $	Column 4 $
Instrument & Controls Tradesmen	576.16	619.72	628.49	654.80	672.34
Instrument Tradespersons Complex Systems	522.16	563.01	570.98	594.88	610.81
Instrument Tradespersons	510.13	549.75	557.53	580.87	596.42
Scientific Instrument Maker	510.13	549.75	557.53	580.87	596.42
Welder Special Class	500.50	539.53	547.16	570.07	585.34
Welder	491.11	529.54	537.04	559.52	574.51
Electrician—Special Class	522.66	563.01	570.98	594.88	610.81
Electrical Fitter	491.11	529.54	537.04	559.52	574.51
Electrical Installer	491.11	529.54	537.04	559.52	574.51
Boilermaker	491.11	529.54	537.04	559.52	574.51
Tradesperson, the greater part of whose time is occupied in marking off and/on template making	495.73	534.47	542.04	564.73	579.85
Mechanical Tradesperson Special Class	522.66	563.01	570.97	594.88	610.81
Tradesperson	491.11	529.54	537.04	559.52	574.51
Pipefitter	491.11	529.54	537.04	559.52	574.51
Fitter—Refrigeration	491.11	529.54	537.04	559.52	574.51
Fitter—Window Frame	491.11	529.54	537.04	559.52	574.51
Motor Mechanic	491.11	529.54	537.04	559.52	574.51
Machinist Engineering					
- First Class	491.11	529.54	537.04	559.52	574.51
- Second Class	436.81	472.01	478.69	498.72	512.08
Certified Rigger/Scaffolder	459.27	496.20	503.22	524.28	538.33
Rigger/Scaffolder—other	446.13	481.88	488.70	509.15	522.79
Tool & Material Storeperson	430.94	465.79	472.38	492.15	505.64
Tradesperson Assistant	415.20	449.11	455.47	474.53	487.24
Tradesperson Assistant who from time to time uses a grinding machine	418.55	452.64	459.05	478.26	491.07
Lagger					
1st six months experience	414.23	448.06	454.40	473.42	486.10
2nd&3rd months experience	418.10	452.64	459.05	478.26	491.07
4th&5th months experience	424.58	457.34	463.81	483.22	496.17
and thereafter	425.63	460.27	466.79	486.33	499.35
Grinder using portable machine	424.58	457.45	463.93	483.35	496.30
Crane Attendent and Dogperson	446.13	481.88	488.70	509.15	522.80
Labourer	392.18	424.69	430.70	448.73	460.75

ii) The above all purpose wage rates are all inclusive and, subject only to the payment of tool allowance, leading hand allowance and construction allowance as per the parent award, are inclusive of all special rates and allowances.

SIGNATURE OF THE PARTIES

Signed for and on behalf of United Construction Pty Ltd :

E. Erdash Manager Maintenance

Company Signature Title (print) Date: 22/4/96

Name of person authorised to sign on behalf of United Construction Pty Ltd Witness: Eugine Alessi

Date: 22/4/96

Signed by Representative for and on behalf of employees :

_____

Employee Signature Title (print) Date:_____

Name of person authorised to sign on behalf of the employees of United Construction Pty Ltd at Alcoa. Witness: _____

Date:_____

J. Ferguson Ass State Secretary

Signature Title (print) Date 24/4/96

Name of person authorised to sign on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australia Branch Witness: G. Sturman

Date 24/4/96

The COMMON SEAL OF The Automotive Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch was hereunto affixed in the presence of:

_____

UNITED CONSTRUCTION BHP TITANIUM MINERALS PROJECT ENTERPRISE BASED AGREEMENT 1996.

No. AG 84 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

United Construction Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. AG 84 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

20 May 1996.

Order.

HAVING heard Mr A. Carpenter on behalf of the Applicant and Mr G. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr W. Tracey on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the following schedule titled the "United Construction BHP Titanium Minerals Project Enterprise Based Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 17th day of April 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.] Senior Commissioner.

_____

Schedule.

1.0—TITLE

This Agreement shall be known as the United Construction BHP Titanium Minerals Project Enterprise Based Agreement 1996.

2.0—ARRANGEMENT

Title	Clause No.
Arrangement	2
Bus Travel Allowance	8
Daily Travel Allowance	9
Date and Period of Operation and Review	4
Grievance Procedure	13
Hours of Work	7
Incidence and Parties Bound	3
No Extra Claims—Commitments	12
Relationship to Parent Award	5
Safety Boots	11
Site Allowance	6
Title	1

Wages and Classifications 14
Weekend Return Home 10

3.0—INCIDENCE AND PARTIES BOUND

This Agreement shall apply to and be binding upon United Construction Pty Ltd in its operations at the BHP Titanium Minerals Project at Beenup and an estimated 100 employees of United Construction Pty Ltd engaged on the project at Beenup who are members or eligible for membership of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Western Australia Branch (AFMEPKIU and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australia Branch (CMETU).

The parties to this agreement are United Construction Pty Ltd (the Employer) and the AFMEPKIU and the CMETU (the Unions).

4.0—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall commence from the date of registration by the Western Australian Industrial relations Commission for a period of six (6) months.

5.0—RELATIONSHIP TO PARENT AWARD

(1) The provisions of the Agreement shall be read and interpreted in conjunction with Part II of the Metal Trades (General) Award No. 13 of 1965 and the Engine Drivers (Building and Steel Construction) Award No. 20 of 1973.

(2) Where there is any inconsistency between this Agreement and Part II of the Metal Trades (General) Award No. 13 of 1965 or the Engine Drivers (Building and Steel Construction) Award No. 20 of 1973, this Agreement shall prevail to the extent of any inconsistency.

6.0—SITE ALLOWANCE

A site allowance of $2.00 (flat) shall be paid in recognition of all disabilities associated with the working conditions at the Beenup site, including but not limited to heat, working in the rain, dirt, wind, height and handling of all materials. This allowance is payable to for each hour worked.

7.0—HOURS OF WORK

The hours of work as set out below represents ordinary time hours and overtime hours with the understanding that overtime hours whilst not guaranteed will not be reduced without prior discussion between the parties.

DAY	TOTAL HOURS PAID	NORMAL TIME	TIME AND A HALF	DOUBLE TIME
Monday	10	7.6 hrs	2.0 hrs	0.4 hrs
Tuesday	10	7.6 hrs	2.0 hrs	0.4 hrs
Wednesday	10	7.6 hrs	2.0 hrs	0.4 hrs
Thursday	10	7.6 hrs	2.0 hrs	0.4 hrs
Friday	10	7.6 hrs	2.0 hrs	0.4 hrs
Saturday	10		2.0 hrs	8.0 hrs
Sunday	8			8.0hrs
Monday	10	7.6 hrs	2.0 hrs	0.4 hrs
Tuesday	10	7.6 hrs	2.0 hrs	0.4 hrs
Wednesday	10	7.6 hrs	2.0 hrs	0.4 hrs
Thursday	10	7.6 hrs	2.0 hrs	0.4 hrs
Friday	6	6.0hrs		
Saturday	0			
Sunday	0			

The Normal working day will comprise

Commencement On Site	7:00am
Rest Period Commences	10:00am
Rest Period Concludes	10:10am
Lunch Commences	1:00pm
Lunch Concludes	1:30pm

In addition to the above the parties to the agreement have agreed to the following:

1) Work commences on site 15mins prior to the rostered start time (ie 6:45am instead of 7:00am). This allows employees to accrue 2 hours and 45 mins at ordinary rates per week (ie 11 x 15 mins). This accrued time is taken at the following times
   a) Work ceases on the Friday directly preceding the weekend return 45 mins earlier than the rostered finishing time of 1:00pm. This allows the employees to leave work at 12:15pm.
   b) Work commences on the Monday directly following the weekend return two hours later than the normal rostered start time of 6:45am . This allows the employees to return to work at 8:45am.
   c) In lieu of an afternoon rest period the parties have agreed to finish their shift fifteen minutes early without loss of wages.

8.0—BUS TRAVEL ALLOWANCE

Transport is provided by United Construction for all it's employees from the Augusta Camp to the site. In lieu of travelling time all employees are entitled to a " Bus Travel Allowance " of $10:00 per day.

9.0—TRAVEL ALLOWANCE

All employees not accommodated by United Construction in the camp are entitled to $11:30 per day to compensate for travelling to the bus departure point ie Augusta Camp.

10.0—WEEKEND RETURN HOME

There is provision for a weekend return break approximately every second weekend, from Friday 1:00pm to Monday 7:00am.

For all distant workers that return home, a "Return Home" allowance of $90.00 per weekend return will be paid for this purpose, subject to the employee returning to work at the scheduled time on the preceding Monday.

11.0—SAFETY BOOTS

New employees to United Construction shall receive a pair of Safety boots upon their commencement on the project. All permanent employees whilst engaged on the project shall receive an allowance of $0.06 per hour worked on site for maintenance of their safety footwear. All permanent employees will have their safety boots replaced on a "Fair Wear and Tear Basis".

12.0—NO EXTRA CLAIMS—COMMITMENTS

(1) The parties undertake a commitment that there shall be no further claims for the term 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 the Agreement shall oppose any applications by other parties to be joined to this Enterprise Agreement.

(4) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

13.0—GRIEVANCE PROCEDURE

(1) Where a question, dispute or difficulty arises, the employee concerned shall initially discuss the matter with their immediate Supervisor.

(2) If the question dispute or difficulty is still unresolved by the discussion referred to in subclause (1) hereof, the employee together with their Shop Steward and their Supervisor shall discus and attempt to resolve the matter with the Project Manager.

(3) Where the foregoing discussions fail to resolve the matter of concern, it shall to a Senior Management representative and the relevant union organiser, at which stage the parties shall then initiate steps to resolve the grievance as soon as possible.

(4) While the steps in subclause (1), (2) and (3) Hereof are being followed, industrial action shall not be taken and the circumstances surrounding that dispute shall remain at status quo as was prior the dispute arising.

(5) If the question, dispute or difficulty remains unresolved, either party may refer the matter to the Western Australian Industrial Commission, provided that any party reserves the right to refer an issue to the Commission at any time.

(6) The parties will ensure that all practices applied during the operation of the procedure are in accordance with safe working principles and consistent with established project custom and practices.

(7) At all stages of this process, emphasis shall be on a negotiated at the project level.

14.0—WAGES AND CLASSIFICATIONS

All wages employees shall be paid as defined in the following wages and classifications

schedule:

WAGES AND CLASSIFICATIONS SCHEDULE.

Classification	Existing Hourly Rate $	New Hourly Rate $
Welder—Coded	$14.16	$14.54
Boilermaker/Fitter/Tradesman	$14.17	$14.55
Certificated Rigger or Scaffolder	$13.09	$13.45
Rigger or Scaffolder	$12.73	$13.07
Certificated Dogman	$12.73	$13.07
Tradesperson's Assistant	$12.01	$12.34
Crane Driver 0—8 T	$13.18	$13.51
Crane Driver 8 —15 T	$13.48	$13.82
Crane Driver 15—40 T	$13.73	$14.07
Crane Driver 40—80 T	$13.93	$14.28
Crane Driver 80- 100T	$14.09	$14.44

Note : the above All Purpose Hourly Rates include tool allowance where applicable.

AUTHORITY TO APPROVE AGREEMENT

SIGNATURES OF THE PARTIES

Signed for and on behalf of United Construction Pty Ltd:

Signed Steven Keyser

Signature Name of person authorised to sign on behalf of United Construction Pty Ltd (print)

Date 31/1/96

Signed for and on behalf of United Construction Beenup Workforce in the presence of:

Signed Simon Poole

Signed Chris Klynsoon

Signature Name of person authorised to sign on behalf of United Construction Pty Ltd Beenup Workforce (print)

Date 2.2.96

Signed John Sharp-Collett (seal affixed)

Signature Name of person authorised to sign on behalf of Automotive, Foods, Metals,Engineering, Printing and Kindred Industries Union (Western Australia Branch)

Date 15.2.96

THE COMMON SEAL of the Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union (Western Australia Branch) was hereunto affixed in the presence of:

Signed Bill Ethell

Signature Name of person authorised to sign on behalf of Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (Western Australia Branch)

Date 21.2.96

THE COMMON SEAL of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (Western Australia Branch) was hereunto affixed in the presence of : Seal Affixed

---

UNITED CONSTRUCTION COOGEE CHEMICALS SULPHURIC ACID HANDLING FACILITY, ENTERPRISE BASED AGREEMENT 1996
No. AG 76 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

United Construction Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. AG 76 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

20 May 1996.

Order.

HAVING heard Mr A. Carpenter on behalf of the Applicant and Mr G. Sturman. on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries 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 following schedule titled the "United Construction Coogee Chemicals Sulphuric Acid Handling Facility, Enterprise Based Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 29th day of April 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.0—TITLE

This Agreement shall be known as the United Construction Coogee Chemicals Sulphuric Acid Handling Facility, Enterprise Based Agreement 1996.

2.0—ARRANGEMENT

Title	Clause No.
Arrangement	2
Incidence and Parties Bound	3
Date and Period of Operation and Review	4
Relationship to Parent Award	5
Site Allowance	6
Hours of Work	7
Safety Boots	8
Grievance Resolution	9
No Extra Claims—Commitments	10
Wages and Classifications	11

3.0—INCIDENCE AND PARTIES BOUND

This Agreement shall apply to and be binding upon United Construction Pty Ltd in its Construction Project at the Coogee Chemicals Sulphuric Acid Handling Facility at Kwinana and 45 employees of United Construction Pty Ltd engaged on the above mentioned project at Kwinana who are members or eligible for membership of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Western Australia Branch (AFMEPKIU).

The parties to this agreement are United Construction Pty Ltd (the Employer) and the AFMEPKIU.

4.0—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall commence from 13 February, 1996, (the date of agreement) and shall be registered in the Western Australian Industrial Relations Commission.

(2) This Agreement shall expire on the practical completion of the project.

5.0—RELATIONSHIP TO PARENT AWARD

(1) The provisions of the Agreement shall be read and interpreted wholly in conjunction with Part II of the Metal Trades (General) Award 1966.

(2) Where there is any inconsistency between this Agreement and Part II of the Metal Trades (General) Award, this Agreement shall prevail to the extent of any inconsistency.

6.0—SITE ALLOWANCE

A site allowance of $1.80 (flat) shall be paid in lieu of all site disabilities. This allowance is payable for each hour worked on site.

7.0—HOURS OF WORK

1) The hours of work on site where practical will be as follows:

The Normal working day will comprise

Commencement On Site	6.00am
Rest Period Commences	9.30am
Rest Period Concludes	9.45am
Lunch Commences	12.30pm
Lunch Concludes	1.00pm
Work Concludes	4.15pm

2) In lieu of an afternoon rest period the parties have agreed to finish their shift fifteen minutes early without loss of wages.

8.0—SAFETY BOOTS

All new employees of United Construction shall receive a pair of Safety boots upon their commencement on the project. This is dependent upon 1 month continuous service. All permanent employees whilst engaged on the project shall receive an allowance of $0.06 per hour worked on site for maintenance of their safety footwear. All permanent employees will have their safety boots replaced on a "Fair Wear and Tear Basis".

9.0—GRIEVANCE RESOLUTION

(1) Where a question, difficulty or dispute arises the matter shall initially be discussed between the employee concerned and if that employee so desires his/her shop steward representative and the employee's immediate supervisor.

(2) If the question, difficulty or dispute is still unresolved by the discussions referred to in subclause (1) hereof the shop steward shall discuss and attempt to resolve the grievance with the site manager.

(3) Where the above discussions fail to resolve the question, difficulty or dispute it shall be referred to a senior management representative and a representative of the State branch of the union. The parties shall then initiate steps to resolve the issue as soon as possible.

(4) While the steps in subclause (1), (2) and (3) hereof are being followed no industrial action shall be taken. A maximum of seven days is allowed for steps 1, 2 and 3 to solve any grievance.

(5) If after seven days the grievance is still not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission provided that any party reserves the right to refer an issue to the Western Australian Industrial Relations Commission at any time.

(6) Either party will give the earliest possible advice to the other party of any issue or problem which may give rise to a grievance or dispute. All relevant facts shall be clearly identified and recorded throughout. At least seven days shall be allowed for all stages of the discussions to be finalised.

(7) No bans or limitations will be placed on the performance of work while the grievance procedure is being followed. The company shall ensure that this procedure shall be applied in accordance with safe working practices and is consistent with established custom and practices at the KNR.

10.0—NO EXTRA CLAIMS—COMMITMENTS

(i) The parties undertake a commitment that there shall be no further claims for the term of this Agreement.

(ii) The parties to the Agreement shall be bound by the terms of the Agreement for its duration.

(iii) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

11.0—WAGES AND CLASSIFICATIONS

All wages employees shall be paid as defined in the following wages and classifications schedule:

WAGES AND CLASSIFICATIONS SCHEDULE

Classification	Existing Hourly Rate $	New Hourly Rate $
Welder—Coded	$13.94	$14.97
Boilermaker/Fitter/Tradesman	$13.94	$14.95
Certificated Rigger or Scaffolder	$12.86	$13.83
Rigger or Scaffolder	$12.51	$13.45
Certificated Dogman	$12.51	$13.45
Tradesperson's Assistant	$11.70	$12.59

Note : the above All Purpose Hourly Rates include tool allowance and construction allowance where applicable.

AUTHORITY TO APPROVE AGREEMENT
SIGNATURES OF THE PARTIES

Signed for and on behalf of United Construction Pty Ltd:

Signed	Brad Weir	5//3/96
Signature	Name of person authorised to sign on behalf of United Construction Pty Ltd (print)	Date

Signed for and on behalf of United Construction Coogee Chemicals Sulphuric Acid Handling Facility Workforce in the presence of:

Signed	Jose'De Oliveira	5/3/96
Signature	Name of person authorised to sign on behalf of United Construction Pty Ltd Coogee Chemicals Sulphuric Acid Handling Facility Workforce (print)	Date
Signed	John Sharp-Collett	11/3//96
Signature	Name of person authorised to sign on behalf of Automotive, Foods, Metals,Engineering, Printing and Kindred Industries Union (Western Australia Branch)	Date

THE COMMON SEAL of the Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union (Western Australia Branch) was hereunto affixed in the presence of:) Seal Affixed

UNITED CONSTRUCTION KWINANA FABRICATION FACILITIES ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 103 of 1996.

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 103 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

8 May 1996.

Order.

HAVING heard Mr G. Sturman. on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr A. Carpenter 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 following schedule titled the "United Construction Kwinana Fabrication Facilities Enterprise Bargaining Agreement 1996" signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement to take effect on the first pay period commencing on or after the 29th day of April 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.0—TITLE

This Agreement shall be known as the United Construction Kwinana Fabrication Facilities Ltd Enterprise Bargaining Agreement 1996.

2.0—ARRANGEMENT

1. Title
2. Arrangement
3. Introduction
4. Area and Scope
5. Incidence and Parties Bound
6. Period of Operation and Review
7. Relationship to Parent Award
8. Aims and Objectives
9. Work Practices and Conditions of Employment
10. Performance Enhancement
11. Dispute Resolution Procedure
12. No Extra Claims
13. Protective Clothing
14. Wage Increase
Signatories to Agreement.

3.0—INTRODUCTION

This EBA is a reflection of the commitment and consensus approach to workplace relations exhibited by the parties in recent years. It builds on the previous EBA (AG 111 of 1994) negotiated by the parties. United Construction Pty Ltd and its employees are aware of the competitive pressures facing industry today, 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 the Agreement and there is a commensurate recognition on the part of United Construction of the need to reward employees for genuine and effective increases in productivity. In this respect it is acknowledged that the future of the company and its employees are inextricably linked.

4.0—AREA AND SCOPE

The Agreement shall only apply to the Kwinana Fabrication Facilities Operations of United Construction Pty Ltd with respect to employees employed in the classifications specified in Clause 14.—Wage Increases of this Agreement.

It is estimated that the number of employees who will be bound by this agreement upon registration is 270.

5.0—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to and be binding upon;

(i) United Construction Pty Ltd in its operations at the Kwinana Fabrication Facilities;

(ii) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (AMWU) hereinafter referred to as "the Union".

(iii) The employees of United Construction Pty Ltd employed under the classifications specified in Clause 14.—Wage Increases of this Agreement.

(2) For the purposes of this Agreement, the Kwinana Fabrication Facilities of United Construction Pty Ltd shall be deemed to be "the enterprise".

(3) Parties to this Agreement are—

(i) United Construction Pty Ltd

(ii) The Union

6.0—PERIOD OF OPERATION AND REVIEW

(1) The actual date of achievement of agreement (22/3/96) by the parties to this Agreement shall be the operative date.

(2) The term of this Agreement shall be two years from the date of ratification.

(3) The parties to the Agreement, shall begin the process of reviewing this Agreement three months prior to its expiry.

(4) In conducting the review of this Agreement, the parties to the Agreement shall assess achievements and gains in productivity and efficiency during its term of operation.

(5) Following the expiration of this Agreement, the parties may apply to cancel this Agreement, and, subject to the outcome of the process of review required under this Clause, make application for a replacement Agreement.

7.0—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted in conjunction with the Metal Trades (General) Award No. 13 of 1965 Part 1 and the Metal Trades (United Construction Pty Ltd) Order No. 1680 of 1993, as amended.

(2) Where there is any inconsistency between this Agreement and either of the documents named in subclause (1) hereof, the terms and provisions of this Agreement shall prevail to the extent of such inconsistency.

(3) This Agreement replaces the previous United Construction Kwinana Complex Enterprise Agreements, No's AG 13 of 1993 and AG 111 of 1994.

8.0—AIMS AND OBJECTIVES

(1) United Construction aims to ensure the continued and long-term viability of its operations, thus providing job security for its employees. United Construction also aims to provide a quality and committed service to the metal fabrication industry and to be the preferred contractor to our clients in this industry. The parties to the Agreement recognise that this aim requires a mutual commitment to developing and enacting a process of improved productivity and efficiency within United Construction.

(2) To support this aim, the following specific objectives have been agreed—

(i) To foster an attitude of consensus and agreement based on consultation and negotiation in the workplace.

(ii) To establish and enhance the multi-skilled capabilities of the employees in the workshops.

(iii) To have a highly motivated, dedicated and loyal workforce.

(iv) To achieve a zero lost time injury level.

(v) To establish and enhance a productive working relationship between the workforce and the management.

(vi) To continuously improve the work processes flexibility of the workshop employees, eliminating demarcation barriers and encouraging the use if initiative by employees.

(vii) To foster improvements in the productivity and efficiency at the workplace to the benefit of the company and its employees.

9.0—WORK PRACTICES AND CONDITIONS OF EMPLOYMENT

The following strategies have been established in regard to the aims and objectives of this Agreement and form the basis of the entitlement to the wage increases specified in Clause 14—Wage Increases of this Agreement.

(1) Sick Leave

(i) It is agreed by the parties that the entitlement to sick leave does not apply to an employee who fails to supply proof of illness or injury as the Company may reasonable require. However, the Company accepts that an employee shall not be required to produce such evidence with respect to the first two absences of two days or less in any year of service.

(ii) All employees shall endeavour to reduce absent/sick days taken. The target for this agreement is that average sick leave taken should not be more than 50% of the award entitlement.

(2) Hours of work

(i) The ordinary hours of work at United Construction Kwinana Fabrication Facility shall be 7.6 hours (resulting in a 38 hour 5 day week). Any hours worked in excess of 7.6 hours on any day, Monday to Friday, shall be paid at overtime rates.

(ii) The daily work schedule in relation to ordinary hours shall be—

7:00am	Commencement of work (to be proceeded by a siren at 6:55am signalling time to move to the workplace)
10:00am—10:15am	Smoko Break
1:00—1:25pm	Lunch Break (unpaid)
3:05pm	Completion of Ordinary Hours
3:30pm	Completion of normal working day

Note: At the request of the workshop employees the Company agreed that five (5) minutes be transferred from the lunch break to the smoko break.

(iii) The nightshift schedule shall reflect the following—

— Smoko and lunch break shall both be 20 minutes in duration as requested by the nightshift employees and agreed by Management.

(3) Unpaid Days Off (UDO's)

(i) Employees are entitled to take, by arrangement, up to 12 days as unpaid days off (UDO). UDO's are made available to assist employees in meeting certain personal/family obligations which necessitate time off work.

(ii) UDO's shall be taken at a time mutually agreed between the employee and their supervisor. Employee's should make every effort to request UDO's in advance from their supervisor, a day and date shall be agreed to within 7 days of the request. Should the day requested not be suitable to the supervisor, another shall be agreed upon within seven days of the request being made.

(iii) The same day off shall not be given to all or the majority of employees, except in circumstances where there are no effects on the production of the workshop.

(4) Workforce Flexibility

To facilitate a flexible and productive working environment, employees will, subject to Clause 35 of the Metal Trades (General) Award, perform all reasonable directions and duties within the limits of their skill, competence and training,

(5) Staff to Assist Wages Employees Where Practicable

Engineering, commissioning and supervisory staff may use tools when carrying out inspections, testing equipment or instructing employees under agreed circumstances, provided this does not replace in any way the jobs of employees covered by this agreement.

(6) Self Supervision

It is a fundamental aim of this agreement to promote the concept of self supervision within the workforce. Employees shall be encouraged to use their initiative and self-discipline to ensure their work is completed with minimum supervision. Employees shall share with management responsibility for safety and quality of work in the workplace.

(7) Overtime

Subject to Clause 14 of the Metal Trades (General) Award No. 13 of 1965, employees are required to work reasonable overtime at the direction of management. All hours worked in excess of 7.6 hours in any one day Monday to Friday, shall be paid at overtime rates.

Where Saturday overtime is scheduled then it shall be offered and accepted on the basis of a minimum of 6 hours. Any arrangement other than 6 hours shall be subject to agreement between the employee and their supervisor.

(8) Workload Fluctuations—

(i) In an effort to enhance flexibility and efficiency at the operations of United Construction's Kwinana Fabrication Facilities, a number of methods have been identified by which handling of fluctuations in workload can be improved in order to minimise any necessary reductions in the workforce. These include—

- Reduction of overtime.
- The taking of annual leave.

(ii) In order that annual leave may be used as 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 mutually suitable to both parties. Where more than four weeks of annual leave have been accumulated, the employer can request that part, or all, of such excess be taken, provided it is a minimum of one week and as long as prior arrangement had not been reached to accumulate leave for special reasons.

(iii) Where prior arrangement has been reached, it will be confirmed in writing, a copy to be kept by the employee and on their personal file

(9) Best Practice

The parties agree to assess and implement "best practice" techniques involving optimal flexibility and efficiency. Areas of focus include—

(i) Improve workplace safety

(ii) Reduce wastage of electricity

(iii) Reduce wastage of consumables

(iv) Reduce wastage of raw materials

(v) Improve workshop setup

(vi) Reduce lost production time

(vii) Reduce supervision

(viii) Reduce reliance on dimensional checkers

(10) Training

United Construction is committed to helping its employees attain higher levels of skill and competency in areas of benefit to the Company. The following have been identified as potential areas of focus—

- Technical Skills
- Interpersonal communications
- Safety
- English
- Job instructions
- Quality of Work.

(11) Communications

The parties agree to take steps to improve and enhance communication between management/supervisors and employees through—

- Toolbox talks.
- Management Report-back Meetings with all employees.
- Peak Steering Team.
- Suggestion Systems.
- Noticeboards.
- Newsletters/Bulletins.

10.0—PERFORMANCE ENHANCEMENT

10.1 Employee Involvement Process

(i) Formation of the Peak Steering Team

A key initiative for the achievement of wages increases and for maximising employee ownership through involvement and genuine interaction is the formation of a Peak Steering Team. The purpose of the Peak Steering Team is to provide support and positive leadership to all Fabrication Facilities employees of United Construction.

(ii) The Peak Steering Team will guide the implementation of the waste elimination process within the Company by meeting the following objectives—

- to develop and maintain the charter by which the Peak Steering Team operates.
- to oversee the successful identification, implementation and monitoring of Key Performance Indicators.
- to give employees ownership of the workplace by allowing them to make decisions affecting their work.
- to communicate progress and status of initiatives.
- to create an environment where everyone is treated in a fair and equitable manner.
- to work at creating a workplace where everyone would like to work.
- to develop trust and teamwork within the Company.

(iii) Frequency and Timing of Meetings

Meetings will take place on every second Wednesday of each month commencing at a common agreed time.

(iv) Composition of the Peak Steering Team

The Peak Steering Team will comprise one elected representative from each of the following areas of the Company's workshop. Each elected representative shall be a permanent UC employee of at least 12 months standing's, able to contribute to improvement of work processes and has a preferred work location in the Kwinana Fabrication Facility.

Each representative shall be elected by the employees within the relevant area for a term of 12 months—

(a) Bays 1,2 and 3

(b) Bays 4 and 5

(c) Bays 6 and 7

(d) Workshop Supervision

The Company will have a total of three representatives (inclusive of the Chairperson and Executive Officer) as members of the Peak Steering Team.

(a) Chairperson

To demonstrate genuine commitment by the Company, the General Manager Workshop or nominee will chair the meetings. The Chairperson is responsible for: orderly conduct of the meetings; ensure open and balanced discussion in the meetings; and providing the agenda for each meeting to the Executive Officer for publishing and distribution.

(b) Executive Officer

The Company will provide an Executive Officer to provide support to the Peak Steering Team. The Executive Officer is responsible for: convening of meetings including room availability, written notification to members, distribution of agenda, distribution of minutes, etc.; recording the minutes of meetings, including action items and follow up; gather and collate suggested work process improvement opportunities; record successes, etc.

(v) Key Performance Indicators

The Peak Steering Team will identify the key work processes and will identify and develop Key Performance Indicators (KPI's) against those processes to measure improved performance. The KPI's will be identified, monitored and evaluated by the Peak Steering Team with the main focus being on improving performance utilising measurement and learning.

11.0—DISPUTE RESOLUTION PROCEDURE

(1) Where a question, dispute or difficulty arises, the matter shall be initially discussed and resolved between the employee, and if so desired, his/her Union delegate, and the employee's immediate Supervisor.

(2) If the question, dispute or difficulty remains unresolved after the process described in subclause (1) hereof has been followed, the Union delegate shall discuss and attempt to resolve the dispute with the General Manager Kwinana Fabrication Facility.

(3) If still unresolved, the matter shall be referred to a Senior Management Representative and the full-time Union Official. The parties shall then initiate steps to resolve the grievance as soon as possible.

(4) While the steps outlined in subclauses (1), (2) and (3) hereof are being followed, industrial action shall not be taken. A minimum of seven days is allowed for discussions in steps (1)—(3) to be undertaken to solve the dispute.

(5) If, after step (3), the grievance is not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission.

(6) Either party will give the earliest possible notice to the other of any issue or problem which has the potential of giving rise to a grievance or dispute. All relevant facts will be recorded and clearly identified through these procedures.

(7) Bans or limitations will not be placed on the performance of work while the procedures outlined in this clause are being followed and all actions shall be in accordance with safe working practice and consistent with established custom and practices of the Kwinana Fabrication Facility.

(8) It is an express condition of this procedure that issues which are unrelated to the operations of United Construction shall not be pursued by the workforce or its representatives to a point where industrial action is undertaken unless it is a state or federal issue. Any issue that is unrelated to the operations at the Kwinana Fabrication Facilities, however effects another Unted Construction Operation shall be discussed upto and including Managing Director and State Secretary level in both parties prior to any industrial action being taken.

12.0—NO EXTRA CLAIMS

(1) The parties agree to undertake a commitment that there shall be no extra claims during the life of this Agreement.

(2) Parties shall be bound by the terms of this Agreement for its duration.

(3) Any application by others to be joined to this Agreement shall be opposed by the parties.

(4) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise, whether involving United Construction Pty Ltd or not.

(5) The terms of this Agreement have resulted from extensive negotiations relating to productivity enhancements that specifically relate to the United Construction Kwinana Workshop thus cannot be used as a precedent elsewhere.

13.0—PROTECTIVE CLOTHING

(1) On engagement employees shall be entitled to be issued (within one month of commencement) with one pair of safety boots. Safety boots shall be exchanged on a "fair wear and tear" basis only.

(2) On engagement employees shall be entitled to be issued (within one month of commencement) with 4 shirts and 4 pairs of trousers (or alternatively 4 pairs of overalls). A further such issue shall be made each twelve months thereafter.

(3) Protective Clothing so issued shall be worn at all times during employment with United Construction and shall not be wilfully damaged or abused.

(4) Upon written request the company shall provide permanent employees with Australian Standard (AS1337) safety glasses fitted with prescription lenses or pay the cost incurred to fit prescription safety lenses to an employee's personal safety frames. The company shall pay for the replacement of such prescription safety lenses after each year of continuous employment.

14.0—WAGE INCREASES

(1) In specific acknowledgment of the productivity and efficiency enhancements within United Construction Kwinana Fabrication Facility targeted by this Agreement, wage rates of employees covered by this Agreement shall be increased by a total of 15% across the term of this Agreement. Such increases will be granted in non cumulative instalments as detailed in subclause (2) of the Clause.

(2) Wage Structure: All Purpose Rate Per Week (38 Ordinary Hours)

(i)

Metals Award Classification	Current Rate $	Column 1 $	Column 2 $	Column 3 $	Column 4 $
Coded Welder	531.62	563.52	571.49	595.41	611.36
Welder	521.60	552.89	560.72	584.19	599.84
B/M Fitter	521.90	553.21	561.04	584.53	600.19
Lic Rig/Scaf	489.40	518.76	526.11	548.13	562.81
Rig/Scaf/Dogman	476.50	505.09	512.24	533.68	547.98
Trades Assistant	449.10	476.05	482.78	502.99	516.47

Column 1: Paid 6% increase effective from the date of agreement, (23/3/96) payable from the first full pay period from the date of ratification.

Column 2: Paid 1½% increase in the first full pay period on or after 6 months from the operative date.

Column 3: Paid 4½% increase in the first full pay period on or after 12 months from the operative date.

Column 4: Paid 3% increase in the first full pay period on or after 15 months from the operative date.

(ii) In addition to the above all-purpose wage rates, employees shall be paid a flat daily payment of $8.30 as an attendance allowance. To qualify for payment, an employee must be ready, willing and available to work the ordinary hours scheduled for Monday to Friday, and for weekends the overtime offered and accepted.

(iii) The above all purpose wage rates are all inclusive and, subject only to the payment of tool allowance and leading hand allowance as per the parent award, are inclusive of all special rates and allowances.

(3) The Company and the union agree to confer on the implementation of the career structure, into the wages structure in sub-clause (2) of this clause, consistent with the provisions of the parent award of this agreement as determined in Clause 7.0.

This process will take place via the Peak Steering Committee as defined in Clause 10. It is intended by all parties to the agreement to have this process concluded within 12 months of registration.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of United Construction Pty Ltd—

.....	General Manager W/shop	.../.../1996
Company Signature	Title (Print)	(Date)

Signed for on behalf of the employees of the United Construction Kwinana Fabrication Facility—

.....	P. Preen (Shop Steward)	01/04/1996
Employee Representative Signature	Title (Print)	(Date

Signed for on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch—

Signed (Seal Affixed)	John Sharp-Collett State Secretary	12/4/1996
Company Signature	Title (Print)	(Date)

UNITED INSULATION CO.
INDUSTRIAL AGREEMENT
No. AG 112 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Corso Industries Pty Ltd T/A United Insulation Co.

No. AG 112 of 1996.

United Insulation Co. Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and there being no appearance 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 United Insulation Co. Industrial Agreement be registered as an industrial agreement in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement will be known as the United Insulation 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. Signatories

Appendix

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 Corso Industries Pty Ltd trading as United Insulation Co. (hereinafter referred to as the company) in the state of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the award).

(2) There are approximately five employees covered by this agreement.

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 SETTLING PROCEDURE

The dispute settlement procedure that shall apply to this agreement shall be in the same terms as that 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 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 the Appendix.

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 $50.00 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 the 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 inability to grant leave where an employee is otherwise entitled.

The 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 subclause (2) of this clause 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.

(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 date of signing 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.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

G. Galati

On behalf of Corso Industries Pty Ltd trading as United Insulation Co.

Dated this 17th day of April 1996.

APPENDIX

	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

UNITEX TEXTURED COATING INDUSTRIAL AGREEMENT No. AG 120 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Jaralia Pty Ltd T/A Unitex Textured Coating.

No. AG 120 of 1996.

Unitex Textured Coating Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

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 Unitex Textured Coating Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Unitex 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. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Programme
19. Signatories

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Jaralia Pty Ltd trading as Unitex Textured Coating (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award").

(2) There are approximately eight employees covered by this Agreement.

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

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that 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 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—Wage Rates.

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 inability 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 subclause (2) of this clause 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.

(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 signing 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.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Graeme Cole

On behalf of Jaralia Pty Ltd trading as Unitex Textured Coating

Dated this 24th day of April 1996.

APPENDIX A—WAGE RATES

	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

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs:

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

WA CEILING INDUSTRIES WALL AND CEILING INDUSTRIAL AGREEMENT
No. AG 121 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Boral Australian Gypsum Ltd T/A WA Ceiling Industries.

No. AG 121 of 1996.

WA Ceiling Industries Wall and Ceiling Industrial Agreement.

COMMISSIONER A.R. BEECH.

10 June 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr P. Westlund and with him Mr S. Sita 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 WA Ceiling Industries Wall and Ceiling Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the WA Ceiling Industries Wall and Ceiling Industrial Agreement

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Objectives
7. Dispute Settlement Procedure
8. Single Enterprise
9. Relationship With Awards
10. Enterprise Agreement
11. Trades/Labour Ratios
12. Wage Increase
13. Industry Standards
14. Clothing and Footwear
15. Training Allowance, Training Leave, Recognition of Prior Learning
16. Seniority
17. Overtime
18. Company Based Incentive Scheme
19. Sick Leave
20. All-In Payments
21. Pyramid Sub-Contracting
22. Drug and Alcohol, Safety and Rehabilitation Programme
23. No Extra Claims
24. Consultation
25. Signatories

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

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 Boral Australian Gypsum Limited trading as WA Ceiling Industries (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) 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. R 14 of 1978 (the "Award").

(2) There are approximately ten employees covered by this Agreement.

(3) The Agreement has been negotiated in consultation with the Association of Wall and Ceiling Contractors of WA Inc. ("the Association").

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. Any party may terminate the Agreement provided three months' notice has first been given in writing. In the event of a fundamental breach the period of notice shall be one month. A breach by a limited number of Association members shall not constitute a fundamental breach.

6.—OBJECTIVES

The objectives of this Agreement are to:

(1) Increase the efficiency of the Association's member companies by the effective utilisation of the skills and commitment of the employees in the industry.

(2) Improve the living standards, job satisfaction and continuity of employment of the member companies' employees.

(3) Develop best practice standards that are internationally recognised based upon a culture of opportunity, continuous learning and improvement through training.

(4) Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety in the industry are maintained.

(5) Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

7.—DISPUTE SETTLEMENT PROCEDURE

This clause applies to any questions, disputes or difficulties arising out of the operation of this Agreement.

(1) Company Specific Industrial Disputes

(a) In the first instance an employee should submit a request concerning a work related issue to his/her immediate team co-ordinator or supervisor;

(b) If the matter cannot be resolved at this stage the employee shall raise the matter with the union delegate, who shall submit the issue to the employee's supervisor;

(c) If not settled at this stage, the delegate and the relevant union organiser may submit the matter to the senior company supervisor for consideration;

(d) If not settled at this stage, the matter will be placed in the hands of the company's senior management and state secretary for the union or his/her nominee;

(e) If the issue still exists after the abovementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The Western Australian Industrial Relations Commission's decision will be accepted by all parties subject to legal rights of appeal.

(f) Whilst the above procedures are being followed work shall continue as it was prior to the issue occurring. No party shall be prejudiced by the final settlement as a consequence of continuance of work in accordance with this clause.

(2) Safety Dispute Resolution

It is agreed that management and their employees have responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

In the event of any disagreements on the necessity to carry out any safety measures or modify, reinforce or reinstate any safety device whatsoever, the procedures set out below shall be adopted.

(a) No person shall dismiss a safety complaint. Any complaint should be referred to the company's safety officer or workers safety representative to be dealt with in accordance with the following procedures.

(i) Where any employee becomes aware of an unsafe situation that employee shall immediately notify the company's safety officer or the workers safety representative.

(ii) The company's safety officer and the workers safety representative shall take immediate action to have the unsafe situation rectified.

(b) Should the company's safety officer consider that no safety precautions are necessary, he/she shall notify the workers safety representative accordingly as soon as possible.

(c) Where there is disagreement on the ruling of the company's safety officer, the company's safety officer will arrange for the immediate transfer of any employee away from the disputed area.

(d) Should the company's safety officer be of the opinion that no action is necessary and the workers safety representative disagrees with that decision an appropriate inspector from the Department of Occupational Health, Safety and Welfare (DOHSWA) shall be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(e) If disagreement still exists the Chief Inspector Construction Branch of DOHSWA, or his/her nominee, shall be called in to assist in the resolution of the dispute.

(f) Whilst the above procedure is being followed there shall be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

(g) It is accepted that safety considerations do override normal work practices and, depending on the degree of potential risk to persons on the job or the general public, can override normal demarcation practices.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Industrial Relations Act, 1979 as amended (the "Act").

9.—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.

10.—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.

11.—TRADES/LABOUR RATIOS

(1) It is recognised that there is an important role for labourers in this industry and it is agreed that they will be utilised in the industry.

(2) No fixed ratios are established by this agreement as the number of labourers will be determined on an as needs basis on the site. Where there is any disputation in relation to this subclause the matter shall be processed in accordance with the general principles and procedures specified in Clause 7.—Dispute Settlement Procedure.

(3) Tradespeople may handle materials and gear within a reasonable vicinity of their work area.

12.—WAGE INCREASE

(1) The parties to this agreement are committed to ensuring that the measures contained in this agreement lead to real gains in efficiency.

As a prerequisite to the payment of the following increases to all employees covered by the agreement, the efficiency measures inclusive hereof shall be satisfied.

(2) This agreement provides for increases of the award hourly rate resulting in the wage rates in Appendix A—Wage Rates, payable from 1 September 1995.

(3) In addition to the rates prescribed by subclause (2) of this clause an allowance of $1.00 per hour all purpose shall apply to all projects. This allowance will be in lieu of the structural frame allowance.

(4) (a) A further allowance of $1.50 per hour for hours worked shall be paid to employees required to handle or install tiles containing mineral fibres. It shall be a requirement of this agreement that the employees in receipt of this allowance wear the appropriate personal protective equipment and have been trained in the proper fitting, use and maintenance of that equipment.

(b) All of the provisions of paragraph (4)(a) of this clause will be reviewed prior to the expiry of this agreement and such review shall include complete re-appraisal of the need to wear personal protective equipment. No allowance is payable if personal equipment is not required.

13.—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.

14.—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.

15.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry and, where appropriate, to provide a career path for employees in the wall and ceiling industry.

To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

Mature adult employees may be trained, initially as labourers and then in the skills of a tradesperson through a structured improver system which will be recognised by the industry.

(2) A training allowance of $11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund. These payments will have a commencement date of 1 February 1996.

(3) 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 inability 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.

(4) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (3) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

(5) It is agreed that safety training will be an important component in the structured training programme.

(6) The parties agree to participate in a Training Advisory Committee that shall consist of three representatives from the Association and three representatives from the Construction Skills Training Centre. The role of the Committee will be to advise the parties as to training priorities for the industry and the appropriateness of particular courses for the industry.

16.—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.

(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.

17.—OVERTIME

The allocation of overtime shall be at the employer's prerogative provided that the employer shall not adversely or unreasonably discriminate against any employees. The practice of one in all in shall be eliminated. An overtime roster may be introduced by the employer in conjunction with the employees.

18.—COMPANY BASED INCENTIVE SCHEME

Individual companies may negotiate company specific incentive schemes which will form an appendix to this agreement. These incentive schemes must ensure that the award provides the base safety net and that all employees in the site have the opportunity to share in the proposed scheme.

Once negotiated, bonus based incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant requirements have been satisfied.

19.—SICK LEAVE

For sick leave accrued after the date of signing 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.

20.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

21.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the

contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

22.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

23.—NO EXTRA CLAIMS

Except as provided for above there will be no extra claims made above those contained in this Agreement for the duration of this Agreement.

24.—CONSULTATION

In relation to general industry matters not otherwise provided for in this Agreement the Union recognises the role of the Association and shall consult with the Association on matters of industry wide significance.

25.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Peter N. Westlund

On behalf of Boral Australian Gypsum Limited trading as WA Ceiling Industries

Dated this 24th day of April 1996.

APPENDIX A—WAGE RATES

	1 September 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

APPRENTICES

Apprentices shall receive the following percentage of the applicable wage rates contained in this Appendix:

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

(a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.

(b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.

(c) There will be no payment of lost time to an employee unable to work in a safe manner.

(d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

(e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

(f) An employee having problems with alcohol and/or other drugs:

- Will not be sacked if he/she is willing to get help.
- Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
- Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

(a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.

(b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.

(c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

WEST AUSTRALIAN POLICE SERVICE ENTERPRISE AGREEMENT FOR PUBLIC SERVICE OFFICERS 1996.
No. PSA AG 119 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australian Branch

and

Commissioner of Police.

No. PSA AG 119 of 1996.

West Australian Police Service Enterprise Agreement for Public Service Officers 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

27 May 1996.

Order.

HAVING heard Mr K. Ross on behalf of the Applicant and Mr M. Bowler on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the West Australian Police Service Enterprise Agreement for Public Service Officers 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 10 May 1996.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement pursuant to Section 41 of the Industrial Relations Act 1979 shall be known as the Western Australian Police Service Enterprise Agreement for Public Service Officers 1996, No. PSAAG 119 of 1996.

2.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read in conjunction with the award. In the case of any inconsistencies between the provisions contained in the award and those in this agreement the provision in this agreement shall prevail to the extent of any such inconsistencies.

3.—ARRANGEMENT

1. Title
2. Relationship to Parent Award
3. Arrangement
4. Area and Scope
5. Parties bound
6. Definitions
7. Term of the Agreement
8. Review
9. No Further Claims
10. Single Bargaining Unit
11. Mission Statement and Corporate Vision
12. Audit of 4% Second Tier and 1989 SEP
13. Past Productivity
14. Variations of Award Provisions
15. Conditions of Employment
16. Bereavement Leave
17. Parental Leave
18. Part-time Employment
19. Annual Leave Loading
20. Dispute Settlement Procedures
21. Broad Agenda
22. Public Service Holidays
23. Salaries
24. Signatures of Parties to the Agreement

Schedule 1—Measurement of Productivity and Efficiency
Schedule 2—Memorandum of Understanding
Schedule 3—Goals to Achieve the 17% Increase in Salaries

4.—AREA AND SCOPE

This agreement shall apply to public service officers in the department known as the Western Australian Police Service, who are employed by the Commissioner of Police on behalf of the Crown under provisions of the Public Sector Management Act and who are members of or eligible to be members of the Civil Service Association of Western Australia Inc and shall operate over the whole of the State of Western Australia.

4A.—NUMBER OF EMPLOYEES COVERED

As at March 8 ,1996 the number of employees subject to this agreement totals nine hundred and eighty five (985).

5.—PARTIES BOUND

This agreement is between the Commissioner of Police as Chief Executive Officer, on behalf of the Crown and the Civil Service Association of Western Australia Inc.

6.—DEFINITIONS

"Agreement" means the Western Australian Police Service Enterprise Agreement for Public Service Officers, 1996.

"Award" means the Public Service Award 1992, as amended from to time to time, or any award which replaces such award.

"Employer" means the Commissioner of Police as Chief Executive Officer, on behalf of the Crown.

"Association" means the organisation of employees known as the Civil Service Association of Western Australia Inc.

7.—TERM OF THE AGREEMENT

This agreement will run for a period of two (2) years from the date of registration in the Western Australian Industrial Relations Commission.

8.—REVIEW

(1) No later than six (6) months prior to the expiration of this agreement the parties shall commence negotiations for a new agreement.

(2) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(3) The pay quantum and efficiencies achieved as a result of this agreement will remain and those rates will form the new base pay rates for a future agreement, or continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.

(4) The agreement will continue in force after the expiry of its term until such time as either party withdraws from the agreement by notification in writing to the other party and to the Western Australian Industrial Relations Commission.

(5) In conducting the review the parties shall consider all productivity initiatives introduced over the life of this agreement including those emanating from the "Delta Change Process".

9.—NO FURTHER CLAIMS

(1) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted, except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

(2) This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

10.—SINGLE BARGAINING UNIT

(1) This agreement has been negotiated through a Single Bargaining Unit which comprised both management and association representatives.

(2) The Single Bargaining Unit parties established a Negotiating Committee responsible for negotiating the enterprise agreement.

11.—MISSION STATEMENT AND CORPORATE VISION

Mission Statement

In partnership with the community, create a safer and more secure Western Australia by providing quality police services.

Corporate Vision

The Western Australian Police Service, like many other police services throughout the world, is operating in a rapidly changing environment. To meet the resulting challenges the parties need to ensure they have the ability to successfully assess and predict the impact of such changes on the profession of policing and the provision of community safety and security.

Definitive responses to changes in the environment are critical to the success of the police service. The speed of change in the environment is such that anything other than a planned response will prove unsuccessful and more importantly, unacceptable to the community and government.

The purpose and direction project of the Delta Program provides the following directions for the Western Australian Police Service:

- The Mission, which states why the service exists—ie. the agency's reason for being;
- The Core Functions, which defines the business the agency is in;
- The Strategic Intentions, which describe the future style and direction of the police service and which defines the framework within which programmes and plans will be developed and implemented; and
- A Statement of Common Values, which makes explicit the shared organisational beliefs governing work practices, decision making and behaviour of employees.

This Corporate Vision does not define detailed strategies for implementation. Rather it aims to provide direction for each member of the department to set priorities and define activities and action plans that will contribute to the collective achievement of the Mission. It represents a charter which employees at all levels can use in fulfilling their responsibilities.

In essence, the Corporate Vision is a vehicle for conveying the core values, the key functions and the future direction of the police service to its stakeholders.

This agreement incorporates and assists the facilitation of this corporate vision.

12.—AUDIT OF 4% SECOND TIER AND 1989 SEP

(1) A complete audit of structural efficiency initiatives since the Restructuring and Efficiency Principle of 1987 has been completed and the parties confirm that none of the previous initiatives form part of this agreement.

(2) The parties agree that matters arising from previous industrial agreements or award changes emanating from the Restructuring and Efficiency Principle of 1987 and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this agreement.

13.—PAST PRODUCTIVITY

A component of the salary increase associated with this agreement shall be in recognition of past productivity improvements made up until January 1, 1996. (Refer Schedule 1) This amount has been discounted by the two arbitrated safety net increases and the net gains shared between the employer and employees

14.—VARIATIONS OF AWARD PROVISIONS

Without limiting the statements of intent contained within this agreement, the parties agree to the specific alterations to the award detailed within Clause 15,16, 17, 18, 19, 22 and 23 of this agreement, for the duration of this agreement.

All other working arrangements of the award shall apply.

15.—CONDITIONS OF EMPLOYMENT

(1) Hours

Prescribed hours of duty to be observed by employees shall be eight (8) hours per day in lieu of seven (7) hours and thirty (30) minutes to be worked between 7.00am and 6.00pm, Monday to Friday, as determined by the employer with a lunch interval of a minimum of thirty (30) minutes to be taken after a maximum of five (5) hours of duty. Subject to the lunch interval prescribed hours are to be worked as one (1) continuous period.

Throughout this agreement to accommodate an increase in prescribed hours from seventy five (75) per fortnight to eighty (80) hours per fortnight, seven (7) hours and thirty (30) minutes becomes eight (8) hours and a four (4) week period shall be one hundred and sixty (160) hours in lieu of one hundred and fifty (150) hours.

(2) Shiftwork

(a) Notwithstanding the provisions contained in the award. The following arrangements shall apply to employees employed as radio operators in the Police Communications Branch.

(b) (i) Shifts of twelve (12) hours and in excess of forty (40) hours per week will be rostered and worked in a manner agreed by management and the majority of employees employed as radio operators in the Police Communications Branch.

(ii) (aa) Shift allowance for afternoon, night, Saturday and Sunday shifts shall not be paid and in lieu a commuted allowance shall be paid on a pro rata basis fortnightly with salary.

(bb) The quantum of commuted allowance shall be :

- $5,950 per annum from January 30, 1996, subject to lodgement of this agreement in the Western Australian Industrial Relations Commission on or before April 30, 1996; increasing to
- $6,200 per annum from April 30, 1996 subject to registration of this agreement in the Western Australian Industrial Relations Commission; increasing to
- $6,410 per annum from April 30, 1997.

(cc) 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.

(c) The continuation of this shift arrangement shall be reviewed at the expiration of twelve (12) months, from 1 January 1996, or at any preceding date agreed to by management and the majority of employees in the Police Communications Branch.

(3) Long Service Leave

(a) Employees appointed to the police service from outside the Public Sector workforce, on or after 10 January 1995, are entitled to thirteen (13) weeks long service leave at the completion of ten (10) years continuous service, in lieu of the award provision of seven (7) years. At the completion of each subsequent seven (7) years continuous service, the employee is entitled to a further thirteen (13) weeks long service leave.

(b) An employee may apply to take a complete entitlement of long service leave on full pay or half pay. In addition, the employee may apply to take long service leave in periods of two (2) weeks or more.

(4) Sick Leave

An employee may utilise up to five (5) days of his or her annual sick leave entitlements to care for spouse, de facto spouse, child, step child, parent, step parent, parent-in-law or any other person who lives with the employee as a member of the employee's family in the event of illness or other debilitating circumstances. In such cases, an application for sick leave exceeding two (2) consecutive days or five (5) single days, must be supported by a certificate from a registered medical practitioner or registered dentist. Sick leave used for family care purposes is not cumulative from year to year but if unused continues to be cumulative as personal sick leave.

(5) Annual Leave Travel Concessions

(a) Provided the concession does not exceed the value of the return economy airfare from his or her headquarters to Perth an employee may elect to use the concession to purchase return economy airfare to any destination of his or her choice. Should the cost of the chosen return economy airfare be less than the value of the return economy airfare to Perth the lesser amount shall be paid.

(b) Accommodation costs of any travel package arrangement will not be paid as part of this concession.

(6) Higher Duties Allowance

(a) Employees will be eligible for a higher duties allowance only after working continuously in a higher classified position for a period of ten (10) working days or more, in lieu of the award provision of five (5) working days. The higher duties allowance will then be paid for the full period of higher duties undertaken by the employee.

(b) All periods of acting of less than ten (10) days in a higher position may be claimed as experience by employees applying for higher positions.

(7) Recovery of Overpayments

(a) Any overpayments made in a given pay period will be deducted from the following pay period or periods at the same rate at which it was initially overpaid.

(b) If a deduction should cause undue financial hardship a lesser rate of repayment may be negotiated.

16.—BEREAVEMENT LEAVE

Clause 26.—Short Leave of the award does not apply and the following bereavement leave provision is substituted in its place.

(1) Entitlement to bereavement leave

(a) Subject to subclause (2) of this clause, on the death of:

(i) the spouse or de facto spouse of an employee; or

(ii) the child or step child of an employee; or

(iii) the parent or step parent of an employee; or

(iv) any other person who, immediately before that person's death, lived with the employee as a member of the employee's family:

the employee is entitled to be paid bereavement leave of up to two (2) days.

(b) The two (2) days need not be consecutive.

(c) Bereavement leave is not to be taken during a period of any other kind of leave.

(2) Proof in support of claim for bereavement leave

An employee who claims to be entitled to be paid leave under paragraph (a) of subclause (1) of this clause is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to—

(a) the death that is the subject of the leave sought; and

(b) the relationship of the employee to the deceased person.

17.—PARENTAL LEAVE

(1) Definitions

For the purposes of this clause:

(a) "Employee" includes full time, part time, permanent and fixed term contract employees.

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(c) " Parental Leave" shall be unpaid leave except where accrued annual leave and/or long service leave is utilised.

(d) "Adoption", in relation to a child, is a reference to a child who—

(i) is not the natural child or the step-child of the employee or the employee's spouse;

(ii) is less than 5 years of age; and

(iii) has not lived continuously with the employee for 6 months or longer.

(2) Entitlement to Parental Leave

(a) An employee is entitled to a period of up to fifty two (52) consecutive weeks parental leave in respect of the birth of a child to an employee or the employee's spouse/partner.

(b) An employee is entitled to parental leave only after he or she has given the employer at least ten (10) week's written notice of his or her intention to take the leave and stating the proposed period of leave to be taken.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this subsection does not apply to one (1) week's parental leave—

(i) taken by the parent immediately after the birth of the child; or

(ii) taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) An employee seeking to adopt a child shall be entitled to two (2) days unpaid leave for the employee to attend interviews or examinations as required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to one (1) additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) An employee seeking to adopt a chid under the age of five (5) years shall be entitled to three (3) weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of fifty two 52 weeks.

(f) Subject to paragraph (c) of this sub-clause where both partners are employed by the employer, the leave shall not be taken concurrently except for special circumstances and with the approval of the employer.

(3) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the employer's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid agreement absences.

(d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) The minimum period of absence on maternity leave shall commence six (6) weeks before the expected date of birth and end six (6) weeks after the day on which the birth has taken place. However, an employee may apply to the employer to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

(b) An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four (4) weeks written notice is provided.

(5) Transfer to a Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of parental leave.

(b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary be a registered medical practitioner.

(6) Replacement Employee

Prior to engaging a replacement employee the employer shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four (4) weeks prior to the expiration of the period of parental leave;

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (5) of this clause the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) An employee may return, subject to the approval of the employer, on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provision of the relevant award.

(d) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level with duties similar to that of the abolished position.

(8) Effect of Leave on Employment Contract

Fixed Term Contract

(a) An employee employed for a fixed term shall be entitled to parental leave, for a period not extending beyond the term of the contract.

Continuous Service

(b) An employee's continuity of service shall not be broken by the period of unpaid parental leave, however, unpaid parental leave shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.

Termination of Employment

(c) An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the award.

18.—PART-TIME EMPLOYMENT

(1) Permanent part-time employment is defined as regular and continuing employment for a minimum of eight (8) hours per week, and a maximum of thirty two (32) hours per week.

(2) Provided that the employee shall not be required to work for a period of less than three (3) hours on any single occasion.

19.—ANNUAL LEAVE LOADING

The annual leave loading provided in subclause (11) of Clause 19.—Annual Leave of the award shall be paid in a pay period in December in the calendar year in which the leave accrues and the divisor for part-time employees is eighty (80) in lieu of seventy-five (75).

20.—DISPUTE SETTLEMENT PROCEDURES

Preamble

(1) The parties to this agreement recognise they have differing roles and responsibilities. Accordingly, the Association recognises the employer has a statutory and public responsibility to the public of Western Australia and the employer recognises the Association has the right to take appropriate action to protect and improve the working conditions and remuneration of its members.

In recognising their differing roles and responsibilities the parties accept the need for a dispute settlement procedure and commitment to same. Subsequently, the parties to this agreement are committed to avoiding industrial disputes and resolving differences by:

- providing a mutually satisfactory procedure for dealing with disputes;
- clearly identifying the issue;
- engaging expeditiously in consultations and/or negotiations;
- acting in accordance with the rules of natural justice;
- endeavouring to resolve issues at the local level or wherever is most practicable for an amicable resolution.
- treat all issues with utmost confidentiality.

(2) Any questions, disputes or difficulties arising under this industrial agreement will be dealt with in accordance with the following procedures:

(a) Stage 1

(i) Any employee or group of employees with a question, dispute or disagreement should discuss the matter with his or her immediate supervisor or association representative in the first instance.

(ii) The supervisor or association representative is to investigate the matter. If the matter cannot be resolved or an authoritative answer given on the day the issue is raised, then a response should be provided within three (3) days.

(iii) Should a response require time to establish an answer, the supervisor shall keep the employee(s) informed of his or her progress in resolving the matter.

(b) Stage 2

(i) If the employee(s) continue to be aggrieved or the issue is still in dispute, the matter is to be discussed between the employee's representative and the employer's nominated representative and an attempt made to resolve the matter. Notification of any question or disagreement may be made verbally and/or in writing.

(ii) At any stage, the parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter.

(iii) If the matter is not resolved within five (5) working days of the date of notification in (i) hereof, either party may notify the General Secretary of the association (or his/her nominee), or the employer (or his/her nominee of the existence of a dispute or disagreement).

(iv) The General Secretary of the association (or his/her nominee) and the employer (or his/her nominee shall confer on the matters notified by the parties within five (5) working days and:

(aa) where there is agreement on the matters in dispute the parties shall be advised within two (2) working days;

(bb) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relations Commission.

(c) Stage 3

(i) Where any matter is referred to the Western Australian Industrial Relations Commission is not resolved by conciliation, it may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

(ii) Except in exceptional circumstances any such matters shall be reserved and only be arbitrated if they remain an issue at the conclusion of agency negotiations and arbitration on any aspect of the proposed agreement is necessary. The parties agree to incorporate the outcome of any proceeding before the Western Australian Industrial Relations Commission in a proposed agency agreement which the parties will apply to register under Section 41 of that Act.

21.—BROAD AGENDA

In coming to agreement, the parties have acknowledged the need to consider a Broad Agenda in accordance with the State and National Wage Fixing Principles.

A Memorandum of Understanding has been entered into between the employer and the Association to be involved in comprehensive internal review of organisational planning and structure. (Refer Schedule 2)

The employer recognises the commitment of employees to the implementation of the DELTA Program. This program involves a review of the purpose and direction of the Department, the promotion system, civilianisation, productivity improvement and the development of a new human resource function. Areas for consideration include:

Purpose and Direction

- Determining customers and their needs
- Determining the needs of Government
- Integration of organisational mission into other aspects of the organisation

- Measurement of organisational performance
- Recognition, determination and focus upon core business
- Strategic management and planning concepts

Organisational Structure

- Structural options
- Integration of support and specialist functions
- Impact of structure on accountability and reporting lines
- Number of reporting lines
- Impact of rank and structure on organisational processes and decision making
- Role of Police Board
- Committees and specialist squads

Management Practice

- Management accountabilities
- Management processes
- Work practices
- Performance management
- Communication
- Decision making processes
- Management education, development and training.

Human and Physical Resources

- Promotion system
- Accommodation
- Operational equipment requirements
- Management of human resources
- Limited function police employees
- Civilianisation
- Contracting out
- Operational and management training
- Relationships between sworn and unsworn personnel
- Digital communication system

Financial and Resource Management

- Linking of budget to planning function
- Long and short term planning processes
- Centralisation/decentralisation of financial control
- Autonomy and accountability for financial management
- Performance management
- Management information systems

22.—PUBLIC SERVICE HOLIDAYS

The public service holidays prescribed in paragraph (b) of subclause (1) of Clause 20—Public Holidays of the award shall not apply.

23.—SALARIES

The agreement provides three (3) increases totalling seventeen per cent (17%) above the award rates of pay.

The amounts prescribed in Column A are the award rates of pay.

The amounts prescribed in Column B reflect a six per cent (6%) increase in the award rates and apply from January 30, 1996, subject to the lodgement of this agreement in the Western Australian Industrial Relations Commission on or before April 30, 1996.

The amounts prescribed in Column C reflect a twelve per cent (12%) increase in the award rates and apply from April 30, 1996, subject to lodgement of this agreement in the Western Australian Industrial Relations Commission on or before April 30, 1996.

The amounts prescribed in Column D reflects a seventeen per cent (17%) increase in the award rates and apply from April 30, 1997, subject to lodgement of this agreement in the Western Australian Industrial Relations Commission on or before April 30, 1996 and achieving the goals detailed in Schedule 3.

SALARIES

	$ per annum Column A	$ per annum Column B	$ per annum Column C	$ per annum Column D
Level 1				
Under 17	10873	11525	12178	12721
17 years	12707	13469	14232	14868
18 years	14822	15711	16601	17342
19 years	17157	18186	19216	20074
20 years	19267	20423	21579	22542
21 years	21165	22435	23705	24763
22 years	21817	23126	24435	25526
23 years	22468	23816	25164	26288
24 years	23115	24502	25889	27045
25 years	23766	25192	26618	27806
26 years	24417	25882	27347	28568
27 years	25166	26676	28186	29444
28 years	25684	27225	28766	30050
29 years	26450	28037	29624	30947
Level 2				
1st year	27367	29009	30651	32019
2nd year	28070	29754	31438	32842
3rd year	28809	30538	32266	33707
4th year	29590	31365	33141	34620
5th year	30407	32231	34056	35576
Level 3				
1st year	31530	33422	35314	36890
2nd year	32405	34349	36294	37914
3rd year	33307	35305	37304	38969
4th year	34233	36287	38341	40053
Level 4				
1st year	35503	37633	39763	41539
2nd year	36498	38688	40878	42703
3rd year	37522	39773	42025	43901
Level 5				
1st year	39494	41864	44233	46208
2nd year	40827	43277	45726	47768
3rd year	42212	44745	47277	49388
4th year	43649	46268	48887	51069
Level 6				
1st year	45960	48718	51475	53773
2nd year	47531	50383	53235	55611
3rd year	49157	52106	55056	57514
4th year	50893	53947	57000	59545
Level 7				
1st year	53555	56768	59982	62660
2nd year	55397	58721	62045	64814
3rd year	57401	60845	64289	67159
Level 8				
1st year	60658	64297	67937	70970
2nd year	62991	66770	70550	73699
3rd year	65884	69837	73790	77084
Level 9				
1st year	69497	73667	77837	81311
2nd year	71938	76254	80571	84167
3rd year	74722	79205	83689	87425
Class 1	78932	83668	88404	92350
Class 2	83142	88131	93119	97276
Class 3	87350	92591	97832	102200
Class 4	91560	97054	102547	107125

SALARIES—SPECIFIED CALLINGS

	Column A per annum $	Column B per annum $	Column C per annum $	Column D per annum $
Level 2/4				
1st year	27367	29009	30651	32019
2nd year	28809	30538	32266	33707
3rd year	30407	32231	34056	35576
4th year	32405	34349	36294	37914
5th year	35503	37633	39763	41539
6th year	37522	39773	42025	43901
Level 5				
1st year	39494	41864	44233	46208
2nd year	40827	43277	45726	47768
3rd year	42212	44745	47277	49388
4th year	43649	46268	48887	51069
Level 6				
1st year	45960	48718	51475	53773
2nd year	47531	50383	53235	55612
3rd year	49157	52106	55056	57514
4th year	50893	53947	57000	59545
Level 7				
1st year	53555	56768	59982	62659
2nd year	55397	58721	62045	64814
3rd year	57401	60845	64289	67159
Level 8				
1st year	60658	64297	67937	70970
2nd year	62991	66771	70550	73699
3rd year	65884	69837	73790	77084
Level 9				
1st year	69497	73667	77837	81311
2nd year	71938	76254	80571	84167
3rd year	74722	79205	83689	87425

	Column A per annum $	Column B per annum $	Column C per annum $	Column D per annum $
Class 1	78932	83668	88404	92350
Class 2	83142	88131	93119	97276
Class 3	87350	92591	97832	102200
Class 4	91560	97054	102547	107125

24.—SIGNATURES OF PARTIES TO THE AGREEMENT

Commissioner of Police

Signed .....

Date .....

On behalf of the Civil Service Association

Signed .....

Position .....

Date .....

This agreement on behalf of the Civil Service Association is subject to confirmation by means of a ballot of its members.

If the vote by the members of the Civil Service Association does not support the agreement, both parties agree to withdraw the application.

SCHEDULE 1—MEASUREMENT OF PAST PRODUCTIVITY AND EFFICIENCY

Appendices attached:

Broad Agenda Items
Appendix A. Transportable Police Stations
Appendix B. Energy Management Program
Appendix C. Clothing Condemnation
Appendix D. Leasing Arrangements
Appendix E. Introduction of Servicing Contract for Police Vehicles
Appendix F. Change in Vehicle Management Arrangements
Appendix G. Vehicle are now Detailed Prior to Being Sold

APPENDIX A

TRANSPORTABLE POLICE STATIONS

1. Due to Police Station design revisitation and the challenge of existing assumptions in respect to design, a meaningful analysis or requirements was carried out.

2. In respect to Policing requirements at Carnamah and Telfer, it was found that these requirements could be met by the use of transportable Police Stations.

3. Standard Police facility (Country)—$550,000.
Transportable cost $300,000.
Therefore (2 x 550,000)—(2 x 300,000) = $500,000 savings.

4. Benefits include flexibility and relocatable design.

5. A further transportable to be built at Leeman in the 1995/95 financial year.

APPENDIX B

ENERGY MANAGEMENT PROGRAM

1. Below is the actual expenditure for the Police Headquarters Electricity over the last three financial years, along with the year to date figure for 1994/95.

Electricity—Central
ESEF-5431

1991/92	$606, 961.68

Electricity/Gas—HQ Complex
ESEF-5431

1992/93	$576,846.32
1993/94	$588,848.77
1994/95	$142,157.65 (YTD)

APPENDIX C

CLOTHING CONDEMNATION

1. Introduced in March 1993, replacing the existing annual issue procedure which was time consuming and cost ineffective. It is estimated that savings of $30,000 per month have been achieved since the introduction of this initiative calculated as follows:

$30,000 @ 18 months = $540,000.

2. Over the last three financial years there has been a considerable reduction in the allocation for uniforms and an increase in the allocation for Leather Jackets.

3. The introduction of Leather Jackets for all Police Officers has increased the allocation for leather accessories form $30,000 in the 1991/92 financial year to $318,000 in 1992/93 and $580,000 in 1993/94 which has been achieved as a result of the Clothing Condemnation Policy without an increase in the allocation. Currently, approximately 70% of employees are equipped with Leather Jackets.

In other words, by changing the annual issue procedure is has been possible to cater for the needs of Police Officers in respect to Leather Jackets without increasing the Supply Budget. Monies saved but not allocated to Leather Jackets has been used to address other priorities.

4. Uniform Expenditure, excluding Leather Items

1991/92	$956,695.47
1992/93	$1,003,280.39
1993/94	$681,042.98
1994/95	$700,000.00 (Allocation)

STANDARD MEASUREMENT

1. The issue of "Made to Measure" trousers as standard stock is currently being addressed and will enable the ordering of larger quantities thus reducing cost.

MATERIAL PURCHASED IN RESPECT TO UNIFORMS

1. Due to an initiative introduced by the Supply Branch in February 1992 which related to the way material was purchased, savings of $490,000 were identified in the 1991/92 financial year. These savings were utilised to address priorities identified by the Executive and were allocated as outlined below:

- Aircraft Hangar—$235,000
- Leather Jackets—$105,000
- Computerised Inventory System—$50,000
- Remaining disbursed to other areas of need—$100,000

APPENDIX D

LEASING ARRANGEMENTS

1. The Department was able to identify accommodation at 8 Burton Street, Cannington which could cater for Community Policing, the officer of Crime Prevention, Youth/Family and Ethnic Affairs and PCYC which will enable savings in resource management in the future.

These new premises have a total area 1200 sqm plus car parking for 50 vehicles. The gross rental is $82,500.

2. Community Policing, Youth/Family and Ethnic Affairs and the Office of Crime Prevention were previously located at Ashburton House, Bentley. The total area of this establishment was 733 sqm with the gross rental of $17,600.

3. PCYC were previously located in the Public Trust Building in an area 160 sqm with a gross rental of $17,600.

4. Through this merger, the Departmental increased the leased accommodation by 34% with a rental saving of $21,969 pa, a total of 26%. The standard of accommodation and working environment has been improved for all employees in this location.

5. The Department through negotiations was able to retain the following assets at the Law Chambers Building:

Work Stations	$223,358
Furniture	$109,549
Security System	$65,000
Computer Infrastructure	$60,000
Equipment	$30,000

APPENDIX E

INTRODUCTION OF A SERVICING CONTRACT FOR POLICE VEHICLES

1. During April 1993, the Fleet Services Branch introduced servicing contracts for vehicles utilised by the Police Department.

2. It is estimated that around 18 man hours per day were able to be saved as previously vehicles had to be transported to the East Fremantle Workshops for servicing. For 1993/94

it is estimated that approximately $18,000 was saved which is an opportunity cost.

(18 man hours/day @ $ $16.29) x 5 days x 12 weeks. Similarly, in the 1994/95 financial year it is estimated that approximately $76,000 will be saved.)

APPENDIX F

CHANGE IN VEHICLE MAINTENANCE ARRANGEMENTS

1. Effective as from April 1994, a new arrangement for the servicing of Departmental vehicles came into effect.

2. This new arrangement involves vehicles being serviced at 10,000 kilometres rather than 5,000.

3. Due to the current policy of replacing vehicles at 40,000 kilometres or two years it is estimated that Departmental vehicles would be required to be serviced at least three times whilst utilised by this Department.

4. The Police Department's 800 vehicle would require servicing at least three times during it's use by the police service at a cost of $40,000 for each service.

(800 x 3) x $40 = approximately $100,000.

5. The estimated saving generated in 1993/94 is $25,000. This is based on figures supplied by Michelle Rogers, Ken Elphick, of the Fleet Services Branch. The estimated saving for 1994/95 is expected to be $75,000.

APPENDIX G

VEHICLES ARE NOW DETAILED PRIOR TO BEING SOLD

1. All vehicles sold are detailed before being auctioned, at a cost of approximately $80.00 per vehicle.

2. Sale of vehicle revenue 1993/94 is $13,376,000.

Estimated vehicle revenue in 1994/95 is $14,878,000.

3. Detailing costs for 1993/94 is $65,000.

Detailing costs for 1994/95 is estimated at $200,000.

4. Refer to attached for further reference.

SCHEDULE 2—MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made on the 9th day of September 1994

BETWEEN

THE COMMISSIONER OF POLICE (The Commissioner)

AND

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INC) (The Union)

in the State of Western Australia.

It is hereby agreed as follows—

INTRODUCTION

As a consequence of concerns raised at the June 1993 Conference of Executive Management, the Department's Corporate Executive determined that an in-depth and comprehensive internal review of organisational planning structure and processes should be conducted.

In August 1993 the report of the Independent Commission to Review Public Sector Finances (the McCarrey Report) was presented. This contained an initial review of the police department and its management processes. To implement and monitor the recommendations and issues arising from the McCarrey Report the Government established the Cabinet Subcommittee on Public Sector Reform. Following discussions between the Minister for Police, the Commissioner of Police and members of the sub-committee it was agreed that a Scoping Project would be undertaken to identify areas for further review and for immediate action. The Scoping Review, undertaken by the consultancy firm Arthur Andersen published in February 1994 identified the need for a comprehensive and co-ordinated Change Programme.

AREAS FOR REVIEW

The following specific and interrelated projects have been identified as areas for review—

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.

PURPOSE

The purpose of this Memorandum of Understanding is to—

Establish principles of participation and negotiation between the parties.

Register commitment by the parties to the review process with the view to achievement of agreed outcomes.

OUTCOMES

The broad outcomes of the change process are—

an organisational culture with a renewed sense of internal and external prestige;

recognition of the organisation as a model for police professional practice, management and service delivery;

a responsive and flexible organisation possessing the internal skills, processes and ability to continuously improve; and

an internal environment that promotes employee satisfaction and motivation.

PRINCIPLES OF THE REVIEW PROCESS

In order to achieve these outcomes the following principles are designed to focus efforts of participation and negotiation between the parties—

Interaction between the parties will be open, honest, genuine and direct.

Remaining open minded and flexible to any ideas which will contribute to the success of the process.

Recognition and respect will be given to the different roles of the parties.

Interaction with staff will be on the basis of fairness and equity.

Determining and adopting "best practice" on an ongoing basis in the areas of policing, police management and delivery of service.

COMMITMENT

Within the attached Framework for the Review Process the parties are committed to the following—

UNIONS

Involvement within each project area will be by participation in established Reference Groups.

In areas of impasse at a project level and considerations across the broad programme, Union Officials will consult with members of the Programme Co-ordination Team.

The Union will encourage employees to participate in the review process.

The Union will safeguard the welfare and interests of its members.

The Union will provide advice and support services to individuals in transition to changing roles.

THE COMMISSIONER.

The Commissioner will provide the opportunity for involvement by members of the Union through Project Reference Groups and through the Programme Co-ordination Team.

The Commissioner will provide the opportunity for the Union to make presentations to the Peak Management Group, as appropriate.

The Commissioner will ensure the provision of appropriate and experienced personnel to facilitate the management and progress of the change process.

The Commissioner will keep employees informed on how they can participate in the change process.

The Commissioner will keep employees informed on the progress of the overall review.

The Commissioner will provide advice and support services to individuals involved in transition to changing roles.

D. ROBINSON
General Secretary
THE CIVIL SERVICE ASSOCIATION (INC)

R. FALCONER
COMMISSIONER OF POLICE

SCHEDULE 3—GOALS TO ACHIEVE THE 17% INCREASE IN SALARIES

The amounts prescribed in column D of clause 23. Salaries of the agreement which provide an increase of 17% on the award rates effective from April 30, 1997 are subject to the parties achieving the following goals.

WESTERN AUSTRALIA POLICE SERVICE

ENTERPRISE AGREEMENT

The major targets in the attached Action Plan complement and support Delta Reforms to support better policing services.

DELTA PROGRAM : REFORMING THE MANAGEMENT INFRASTRUCTURE TO SUPPORT BETTER POLICING SERVICES

ORGANISATIONAL STRUCTURE

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Establish Regional Management Structure and Offices	* Select and appoint Regional Commanders	→											
	* Select and appoint District Officers Superintendent	→	→	→	→	→							
	* Establish Regional Offices - Southern - Metro - Northern - Central	→ →	→	→	→								
	* Establish District Offices	←	→	→	→	→	→						
Establish Specialist Management Structure	* Select and appoint Commanders	→											
	* Select and appoint Superintendents	→	→	→	→	→							

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Implement Specialist Units	* Sexual Assault Basic Unit Formed												
	* Organised Crime Basic Unit Formed												
Devolve financial and human resource support to Regions	* Locate Resource Officers in Regions - Southern - Metro - Northern - Central												
Devolve command and control and/or relocate specialist units within Regions/Districts	* Traffic - Midland - Joondalup - Cannington - Perth - Fremantle - Mirrabooka - Country												
	* Crime (Detectives) - Metropolitan - Country												
	* Liquor & Gaming Officers												
	* BCI Collators and Analysts												

ORGANISATIONAL STRUCTURE

IMPLEMENTATION TIMETABLE

		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Flatten Organisation Structure by Reducing Commissioned Officer Positions	* Superintendent positions reduced by 40	←	—	→									
	* Determine the establishment for Inspector positions	←	—	—	—	—	→						
Establish Professional Standards and Ethics	* Establish portfolio and appoint Assistant Commissioner	→											
	* Review of Standards/Values/Codes of Conduct that reflect a customer focus for all employees (Completed & Partial Implementation).	←	—	—	—	—	—	—	—	→			
	* Review Management Audit System	←	—	—	—	—	—	—	—	→			

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Civilianisation - 300 extra officers in front line policing	* 300 positions identified and approved for civilianisation	→	→										
	* Civilians in place - 200 in place - 300 in place	→	→	→						→			
500 Program	* Recruit and train 500 additional police officers - 380 additional officers - 410 additional officers - 490 additional officers - 500 additional officers	→	→	→			→			→			→
Enhance operational effectiveness	* Implement revised tenure policy.	→	→	→									
Upgrade Skill level of personnel to cope with integrated command and control	* Introduce specific management training for Sergeants, particularly OICs of Stations. Training to include practical experience in reviewing work practices **	←	←	←	←	←	←	←	←	←	←	←	→

** On-going Program through 1996/1997

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Implement a new Strategic Management Framework in WAPS including * **Regions** * **Districts** * **Specialist Portfolios**	* Conduct "pilot" Planning Sessions in the Southern Region	→											
	* Conduct Planning Sessions and develop plans for Regions/Districts.	→	→										
	* Develop performance indicators including customer satisfaction surveys.	→	→	→	→	→	→						
	* Quarterly performance reporting.				→	→	→	→	→	→	→	→	→
Local Service Delivery - including establishing community partnerships	* District Officers to introduce community partnerships.				→	→	→	→	→	→			

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Review and Evaluate	* Air Wing	←	→	→									
	* Fleet Management	→	→	→	→								
	* Alternative scheme for police providing prisoners' meals in lockups	→											
	* Ministerial Support Service	←	→	→	→								

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Prevention and Control of Crime	* Restructure of Neighbourhood Watch to focus on crime prevention	→	→	→	→	→	→						
	* Domestic Violence Program to be introduced in all Districts	→	→	→	→	→	→						
	* Implement State Crime Prevention Plan with the Community Policing Council	→	→	→	→	→	→	→	→	→	→		
	* Establish Mobile Police Facilities and locate in Districts based on community priorities - Midland - Joondalup - Cannington - Perth - Fremantle - Mirrabooka	→	→			→							
		→	→	→	→	→	→	→					
		→	→	→	→	→	→	→	→	→	→	→	→
		→											
		→											
		→	→	→	→	→	→	→	→				

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Implement Strategic Partnerships re Abuse of Alcohol	* Consolidate and implement Pilot Harm Minimisation Program at Fremantle (Accord)	→	→	→									
	* Identify further major priority locations eg. Northbridge, Leederville, Geraldton.	→	→	→	→	→	→	→	→	→			
Establish Region/District Intelligence Units	* Fremantle Pilot	→	→	→									
	* Metropolitan area	→	→	→	→	→	→						
	* Statewide	→	→	→	→	→	→	→	→	→	→	→	→
Implement and staff flexible response programs for disorderly groups, eg. "Bikies".	* Statewide	→	→	→									

TARGET	*ACTIONS*	*IMPLEMENTATION TIMETABLE*											
		BY JULY 1996			BY OCTOBER 1996			BY JANUARY 1997			BY APRIL 1997		
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mch	Apr
Enhance the recovery of stolen property	* Commence and continue to implement and administer the Pawnbrokers Act	←	←	←	←	←	←	←	←	←	←	←	→

WESTERN AUSTRALIAN ELECTORAL COMMISSION ENTERPRISE AGREEMENT 1996.

No. PSA AG 4 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australian Branch

and

Western Australian Electoral Commission

No. PSA AG 4 of 1996.

Western Australian Electoral Commission Enterprise Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

17 May 1996.

Order.

HAVING heard Ms P. Branson on behalf of the Applicant and Ms L. Pritchard on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Western Australian Electoral Commission Enterprise Agreement 1996 signed by me for identification and attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 14 May 1996.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This Agreement shall be known as the Western Australian Electoral Commission Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties and Number of Employees Bound
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 SEP
11. Shared Mission for the Western Australian Electoral Commission
12. Objectives and Principles
13. Productivity Improvement
14. Productivity Measurement
15. Employment Conditions
16. Salary Increases
17. Dispute Settlement Procedures
18. Signatures of Parties to the Agreement

Schedule A—Employment conditions
Schedule B—Salary Schedule
Schedule C—Grievance/Dispute Settling Procedures

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Western Australian Electoral Commission employees employed under the Public Sector Management Act working for the Western Australian Electoral Commission who are members of or eligible to be members of the CSA party to this Agreement.

4.—PARTIES AND NUMBER OF EMPLOYEES BOUND

(1) This Agreement is made between The Electoral Commissioner, and the Civil Service Association of Western Australia Incorporated.

(2) It is estimated that 40 employees will be bound by this Agreement upon registration.

5.—DEFINITIONS

"Agreement": The Western Australian Electoral Commission Enterprise Agreement 1996.

" CSA": Civil Service Association of Western Australia Incorporated

"Employee": for the purpose of this Agreement, someone who is referred to at Clause 3—Scope.

"Employer": the Electoral Commissioner

"Family": a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependant on, or is a member of the household of the employee. (Equal Opportunity Act 1984)

"Government": the State Government of Western Australia

"Minister": the Minister or Ministers of the Crown responsible for the administration of the Commission.

"PSA 1992" the Public Service Award 1992

"the Commission" The Western Australian Electoral Commission

"WAIRC": The Western Australian Industrial Relations Commission

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement will operate for a period of 18 months from the date of registration in the Western Australian Industrial Relations Commission (WAIRC). If this Agreement is lodged after 1 January 1996, but before 31 March 1996, the agreed repackaging and first Enterprise Bargaining Agreement Productivity pay increases will apply retrospectively on and from 1 January 1996.

(2) The parties will review this Agreement six months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement, except where the award rate is higher in which case the award shall apply.

(5) The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

7.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this Agreement.

(2) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

(1) This Agreement shall be read and interpreted wholly in conjunction with the provisions of the PSA 1992 which apply to the parties bound to this Agreement.

(2) Where there is any inconsistency between this Agreement and the relevant parent Award, this Agreement shall have precedence to the extent of any inconsistency.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Commission and CSA.

(3) The parties have negotiated this Agreement under the auspices and terms of the "Western Australian Public Sector (Civil Service Association) Enterprise Bargaining Framework Agreement 1995."

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial Agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—SHARED MISSION FOR THE WESTERN AUSTRALIAN ELECTORAL COMMISSION

(1) The parties to this Agreement are committed in striving to achieve the Commission's mission which is:

"To maintain and enhance the integrity of Western Australia's electoral system"

(2) In achieving our mission we have five (5) primary values which shape the way we will operate. These are:

(a) To ensure services and policy have a customer focus.

(b) To strive for success and continuous improvement in all our activities.

(c) To carry out all our activities with integrity.

(d) To be a leader in the field of educating the public in their electoral rights and obligations.

(e) To develop a corporate culture which fosters innovation, creativity and a commitment to the development of the employee's of the Commission.

(3) To achieve our mission we will need to pursue the following supporting objectives:

(a) Provide cost effective and professional services.

(b) Deliver agreed community and client services.

(c) Be pro-active and innovative in the delivery of electoral awareness and education services to the Western Australian public.

(d) Provide an equitable, safe and healthy work environment in which employees' personal contributions and growth are supported and encouraged.

(e) Meet all regulatory obligations.

12.—OBJECTIVES AND PRINCIPLES

The Western Australian Electoral Commission will continuously strive to provide a quality service to the Western Australian public and to improve the overall performance of the Commission. Enterprise bargaining will assist this by:

(1) Ensuring that the operations of the Commission are managed efficiently and effectively in the best interest of its employees, customers and clients that it serves.

(2) Satisfying the requirements of clients and customers through the provision of reliable, efficient and professional services.

(3) Achieving the Commission's mission and improving productivity and efficiency through ongoing improvements.

(4) Promoting the development of trust and motivation and to continue to foster enhanced employee relations.

(5) Facilitating greater flexibility in decision making and allocation of human and other resources.

(6) Promoting increased satisfaction from jobs and secure employment opportunities.

(7) Developing and pursuing changes on a cooperative continuing basis by using participative practices.

(8) Promoting health, safety, welfare and equal opportunity for all employees.

(9) Constantly developing the skills of employees through the provision of appropriate training and career development.

(10) Constantly reviewing management and employee work practices with a view to promoting efficiency and flexibility.

13.—PRODUCTIVITY IMPROVEMENTS

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of programme and service delivery of the Western Australian Electoral Commission.

The parties agree that a broad range of initiatives have already been implemented in the Western Australian Electoral Commission that have resulted in a more productive, effective and efficient delivery and range of services within the existing resources. These initiatives are on-going and are included in this Agreement as part of the continuing productivity initiatives within the agency.

(1) Past Productivity Improvements

Employees of the Commission have been committed to a programme of increased productivity and change for the past three years. The initiatives identified and implemented have contributed to an identified increase in productivity, increased customer satisfaction and greater employee satisfaction. The initiatives are:

(a) Identified increases in core function workloads.

(b) Establishment of the Electoral Education Centre

(c) Changes in work practices specifically relating to:

(i) Alternate training options.

(ii) Costing procedures for non-parliamentary elections.

(iii) Appointment of base grade officers to returning officer positions for non-parliamentary elections.

(iv) Non-voting procedures.

(2) Current and Future Productivity Improvements

The parties agree to develop and implement further productivity improvements by way of:

(a) Continuous Improvement

To support the development of quality systems and improved processes, the parties will implement processes to support continuous improvement throughout the Commission. For the term of this Agreement these will involve the following;

(i) Continual Application And Improvement Of Past Productivity Initiatives.

Productivity improvements implemented prior to the registration of this Agreement will continue to operate throughout the life of this Agreement. As a result of the continual application of these initiatives, greater productivity and efficiency, skills development and the delivery of quality services will be achieved.

(ii) Functional Review Of Election Stores And Casual Recruitment Functions.

The parties agree to conduct a functional review of election stores and casual recruitment with the view of utilising alternative service providers for non-core functions. This will result in a more efficient and cost effective service whilst increasing productivity through the allocation of human resources to core functions of an election.

(iii) Human Resource Administrative—Personnel Work Practices.

To enable the Commission to streamline processes and improve the quality and delivery of services to clients in the area of personnel administration, a review of personnel practices and procedures will be conducted. Procedures will be identified which can be streamlined to achieve greater efficiency and improve productivity of the Corporate Service Branch. The review process will be on-going throughout the term of this Agreement.

Three areas have been identified for immediate implementation on registration of the Agreement which will result in reduced administrative costs and the allocation of Corporate Service resources to more core functions of the organisation. These are:

(aa) Payment of annual leave loading in one payment.

(bb) Payment of meal allowance through salaries.

(cc) Changes to overtime provisions— payment at time and one half.

(iv) Introduction Of Improved Election Management Systems.

To enable the Commission to streamline processes and improve the quality and delivery of services to clients in the area of eligibility to

vote and ballot results for non-parliamentary elections, the Commission has introduced two new systems; Compu Vote and Barcoding. Compu Vote has been in operation since 1992 with Barcoding being piloted over the past 12 months. As a result of the successful piloting and implementation of these systems, the parties agree to continue with their application in order to continually improve the efficiency and effectiveness of non-parliamentary election services to our clients.

It is envisaged that future applications of these systems will be extended to functions of State General Elections conducted by the Commission.

(v) Documentation Of Core Procedures.

The continual documentation and review of core function procedural manuals by management and employees will guarantee the Commission continues to deliver an efficient and productive service to its clients and customers. The success of the Commission's Risk Management Policy is due in part to the documentation of core functions. This is especially evident at election periods.

(vi) Safe Working Environment

The Commission through its employees will strive to maintain a safe workplace through the use of OHSW representatives. This will be achieved through the continual identification, correction and removal of work situations which present a potential safety hazard and the training of employees in safe working procedures.

(b) Increased flexibility

The continuous improvement of the Commission's internal and external service delivery is dependent on the agency having flexibility in the utilisation and development of its resources. This will include:

(i) Continued Temporary Appointment Of Level One Officers As Level Two Returning Officers For Non-Parliamentary Elections.

The parties agree to continue with the temporary appointment of level one officers as level two returning officers for non-parliamentary elections for the life of this Agreement In doing so, improved allocation of resources, reduction in salary costs and an improved service to clients will be achieved. This initiative also provides employees with the opportunity to exercise skills not available at the base level.

(ii) Flexible Working Conditions.

It is agreed that employees' employment satisfaction and commitment is essential in the Commission achieving its objectives. In order to achieve these objectives, it is recognised that working conditions should be flexible in order to meet the needs of the employee as well as the operational needs of the Commission. To achieve this aim, the Commission has reviewed and changed the following working conditions.

Sick and Special Leave

Parental Leave

Bereavement Leave

Long service Leave

Flexi-Time

Overtime Provisions

Hours of Duties

The parties agree to adopt the changes in employment conditions as detailed in Clause 15—Employment Conditions and Schedule A—Employment Conditions of this Agreement.

(c) Customer Focus

To ensure our customers are aware of, have access to, and are provided with a full range of electoral services, the parties agree to address a wide range of initiatives which will achieve this objective, whilst improving the quality, delivery and range of services provided.

As part of the parties' commitment, an employee working committee has been established in order to identify areas requiring development or improvement and to foster a customer focus workplace philosophy. Through consultation between management, employees, the focus committee and feedback from customer groups, a wide range of initiatives was identified. The improvement initiatives which are to be implemented and measured for this Agreement are:

(i) Service Delivery

The parties agree to continuously strive to improve direct communication with customers to ensure service delivery is efficient and professional. In order to achieve this, standards will be established, customer and client feedback will be sought and improvements made to internal information dissemination.

(ii) Extended Customer Contact Hours at State General Elections.

The parties agree to improve community access to electoral information and services at election times through the implementation of an extended office hours policy. Customers and clients will be able to access the Commission's services during a six week State General Election period. Business hours will be extended to 7.30 pm Monday to Friday and the Commission will be open on Saturday mornings.

As this Agreement encapsulates the 1997 State General Election, a majority of the customer focus initiatives focus on improvements regarding promotion of services and delivery of services specifically for the 1997 State General Election. These initiatives are detailed in sub-clause (4)(1) of this clause and will be implemented in this Agreement with productivity measurement making the basis for the second Agreement.

(d) Staff Training and Development

Critical to the success of the Commission's mission, is a capable workforce with skills and knowledge that not only match the operations of the agency but allow us to meet the needs of our customers.

It is recognised by all parties that staff development and career pathing is an integral component of producing and maintaining a capable workforce. In order to achieve this a commitment to a programme of staff training and development is required. As part of the parties' commitment, an employee working committee has been established in order to identify areas requiring development or improvement with a mission and aim to:

Mission: Have a workforce skilled and knowledgeable in all aspects of electoral systems, processes and procedures operating in Western Australia in order to fulfil the Commission's mission, and to provide opportunities for employee training and development

Aim: Improve the effectiveness and efficiency of employees through training and development, enabling then to increase the agency's productivity and provide quality customer service.

As conducting State General Elections is a component of the Commission's operations, a highly skilled and knowledgeable workforce is essential. In order to improve the quality of service delivery and implement new and improved processes, a training program will be developed and implemented for non-parliamentary election management and ballot counts.

(i) Non-parliamentary elections

The parties recognise that in order to ensure non-parliamentary elections are conducted efficiently and cost effectively in accordance with legislation and regulations, employees must be well skilled and knowledgeable in all aspects of election management and counting procedures. A structured and comprehensive training program for all employees of the Commission will be developed and implemented within the term of this Agreement with an aim to:

(aa) Improve the skills and knowledge of employees in election management and counting procedures for their professional development and career advancement opportunities within the agency and the service.

(bb) Achieve improvements in productivity and the level of customer service in the delivery of non-parliamentary election services.

(cc) Have a skilled and knowledgeable workforce for greater flexibility in the allocation of resources.

The parties agree that increased productivity will be achieved through the implementation of agreed quality management concepts, including project management approaches to improve productivity.

(3) The strategies and initiatives introduced over the life of the Agreement will impact significantly on work practices, customer service and employee satisfaction.

(4) Future Issues For Negotiations

(1) During the life of this Agreement the parties agree to address the following issues which have been identified specially to increase productivity and reduce costs. These will form the basis of the second enterprise Agreement of the Commission.

(a) Customer Focus

(i) Review Of Polling Place Services.

The parties agree that they will endeavour to improve information and access at polling places for all electors at the 1997 State General Election through improved advertising and provision of services for all voters. A key focus of this initiative is to ensure electors with special requirements are aware of these services and can access them freely.

(ii) Promotion Of Voting Services For State General Elections.

The parties agree that they will endeavour to provide the community with information and promote voting options available for the 1997 State General Election. It is recognised that many electors are not aware of the voting options open to them at election time. This strategy will endeavour to improve the advertising of voting options with a particular focus on those customers with special needs.

(b) Increased Flexibility

(i) Hours Of Duty At Election Periods

To enable the Commission and its employees to address the operational needs and client demands at a State General election, more flexible working arrangements will be established and implemented for the 1997 State General Election. This tool will allow the Commission to allocate resources in a more efficient and cost effective manner whilst reducing employee fatigue and the requirement to work excessive hours. This will also result in improved services to customers and clients through the implementation of extended office access hours.

(c) Rationalisation of Electoral Publications

To enable the Commission to provide customers with an improved publication service, a review and rationalisation of publications will be conducted during the term of this Agreement. This initiative will endeavour to identify alternative cost efficient mediums, which meet the needs of clients and customers. As part of the parties commitment to improvement and change, an employee working committee has been established to develop and implement this initiative.

(2) It is also agreed that the parties will continue to address a range of other issues and reforms specifically aimed at increasing productivity during the life of this Agreement. The parties agree that these issues will also form the basis of future Agreements.

These issues include:

Additional workload and management of elections by postal vote for Local Government Agencies.

Staff training & development.

Customer focus

Improving and increasing the Commission's education and public awareness roles.

Information systems and facilities.

Continuous review of work practices.

14.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Western Australian Electoral Commission to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of the Western Australian Electoral Commission are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, Western Australian Electoral Commission and the Government on behalf of the community.

(3) The following indicators have been agreed by the parties to assess progress in the performance of key elements of the Agreement:

(a) The extent to which customers and clients express satisfaction with the delivery and range of services provided.

(b) The extent to which dollar savings are achieved.

(c) The extent to which employees indicated an increase in their level of understanding relating to the management of non-parliamentary elections.

(d) The extent to which customers and clients utilised the extended hours at the 1997 State General Election.

(4) Comparisons between the Western Australian Electoral Commission's levels of performance are undertaken through the use of performance indicators.

(5) It is agreed that the employees' understanding of productivity measurement concepts is vital to for performance monitoring arrangements to be successful on an ongoing basis.

(6) The parties agree that the value of the initiatives included in this Agreement and assessed through the application of performance indicators is approximately 5%

(7) A performance measurement system will be developed to measure the following initiatives:

(a) Functional Review Of Election Stores And Casual Recruitment Functions

(b) Introduction Of Improved Election Management Systems

(c) Service Delivery

(d) Extended Customer Contact Hours At the 1997 State General Election.

(e) Staff Training and Development—Non-Parliamentary Elections

(8) The performance measurement system will be used to calculate the value of productivity improvements in the Commission listed in subclause (2) of Clause 13.—Productivity Improvements for salary increases outlined in subclause 2 of Clause 16—Salary Increases.

(9) The value of the productivity improvements will be shared between the Commission and its employees. The employees' share shall be 50% and the Commission's share which shall include the return to government on behalf of the community shall be 50%.

15.—EMPLOYMENT CONDITIONS

(1) Annual Leave Loading

The parties agree that the amendments to Award Conditions as outlined in Schedule A, Clause 1 shall apply from the date of registration of this Agreement.

(2) Bereavement Leave

The parties agree that the provision of Bereavement Leave as per the Minimum Conditions of Employment Act 1993 and outlined in Schedule A, Clause 2 shall apply from the date of registration of this Agreement.

(3) Flexi-leave

The parties agree that the amendments to Award Conditions as outlined in Schedule A, Clause 3 shall apply from the date of registration of this Agreement.

(4) Hours of Service—Election Periods

The parties agree that the amendments to Award Conditions outlined in Schedule A, Clause 4 shall apply from the date of registration of this Agreement.

(5) Long Service Leave

The parties agree that the amendments outlined in Schedule A, Clause 5 shall apply from the date of registration of this Agreement.

(6) Overtime Allowance

The parties agree that the amendments to Award Conditions as outlined in Schedule A, Clause 6 shall apply from the date of registration of this Agreement.

(7) Parental Leave

The parties agree that the Parental Leave provision outlined in Schedule A, Clause 7 shall replace Clause 23— Maternity Leave provisions outlined in the PSA 1992 and shall apply from the date of registration of this Agreement.

(8) Public Service Holiday Days in Lieu

The parties agree that the Public Service Holiday Days in Lieu provision outlined in Schedule A, Clause 8 shall apply from the date of registration of this Agreement.

(9) Short Leave

The parties agree that the Short Leave provisions outlined in the PSA 1992 will no longer apply from the date of registration of this Agreement.

(10) Sick and Special Leave

The Sick Leave clause of the PSA 1992 shall be known as Sick and Special Leave from the registration of this Agreement.

The parties recognise that employees have family responsibilities and that employment conditions must be responsive to this. Further, the parties recognise the need for ceremonial leave to be available to workers who are legitimately required to be absent from work for their tribal/ceremonial purposes.

The parties agree that the amendments to Award Conditions Clause 22- Sick and Special Leave as detailed in Schedule A, Clause 9 shall apply from the date of registration of this Agreement.

16—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued cooperation of those improvements in productivity and work practice changes outlined in Clause 13—Productivity Improvements.

(2) The following increases will be payable during the life of this Agreement:

(a) an increase of 3.2% for repackaging of conditions to which will be added a further 3.8% Enterprise Bargaining Agreement Productivity increase, will apply retrospectively on and from 1 January, 1996 providing the Agreement was lodged in the Western Australian Industrial Relations Commission prior to 31 March 1996, and

(b) a further increase of 2.25% to apply on and from 1 October, 1996;

The rates that shall apply during the Agreement are set out in Schedule B—Salary Schedule of this Agreement.

17.—DISPUTE SETTLEMENT PROCEDURES

(1) In the event of any questions, disputes or difficulties between the parties as to the interpretation and implementation of this Agreement or other matters, the following procedures shall apply:

(a) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.

(b) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (a) hereof the matter shall be referred by the CSA Representative to the Electoral Commissioner or his/her nominee for resolution.

(c) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the Electoral Commissioner it may be referred by either party to the WAIRC.

(2) Grievance/Dispute Settling Procedures are detailed at Schedule C of this Agreement.

18.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed for and on behalf of the
CIVIL SERVICE ASSOCIATION WESTERN AUSTRALIA INC. by:

.....

Date: .... / .... / ....

Signed by the Electoral Commissioner,

.....

Date: .... / .... / ....

SCHEDULE A—EMPLOYMENT CONDITIONS

1.—ANNUAL LEAVE LOADING

The following provisions shall be read in conjunction with the existing clause 19 (Annual Leave) provisions in the PSA 1992.

1. Definitions

(a) Accrued leave—is the leave an officer is entitled to from a previous calendar year.

(b) Pro-rata leave—is the proportion of leave that an officer is entitled to in the current year, either from the date of commencement, or to the date of cessation.

2. Annual Leave Loading

(a) Accrued Annual Leave Loading

(i) All employees covered by this Agreement shall be paid out all accrued annual leave loading for the balance of accrued annual leave up until 31 December 1995 on the first pay period following the registration of this Agreement.

(ii) The salary rate for such accrued annual leave loading shall be at the officer's substantive salary immediately prior to the signing of this Agreement except for officers who:

(aa) were being paid an allowance for higher duties and where the allowance has been paid for a continuous period of 12 months or more prior to 31 December 1995.

(b) Pro-rata Annual Leave Loading

This clause replaces clause 19 (11)(d), (e) and (f) of the PSA 1992.

(i) All employees shall be paid annual leave loading in a lump sum equivalent to 17.5% of 4

weeks salary or as per clause 19,(12)(c)(ii) of the PSA 1992.

(ii) The salary rate for such pro-rata annual leave loading shall be at the officer's substantive salary except for officers who:

(aa) are receiving an allowance for higher duties and where the allowance has been paid for a continuous period of 12 months or more prior to the payment of the leave loading or

(bb) would have received an allowance for a continuous period of 12 months or more to 31 December of the year in question.

(iii) An officer meeting the requirements of subclauses 2(b)(ii)(aa) or (bb), shall be paid leave loading at the higher rate.

(iv) Such payment shall be made in the first pay period of December of each year.

(c) Any employee who is promoted or transferred out of the Commission shall receive a pro-rata payment of annual leave loading calculated to the final day of employment with the Commission.

2.—BEREAVEMENT LEAVE

(1) Entitlement

Subject to subclause 4 of this clause, on the death of a family member as defined in clause 5 (Definitions) of this Agreement, the employee is entitled to paid bereavement leave of up to two (2) days per bereavement.

(2) The two (2) days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

(4) Proof In Support Of Claim For Leave;

An employee who claims to be entitled to paid leave under subclause 1 of this clause, is to provide to the Electoral Commissioner, if so requested by the Electoral Commissioner, evidence that would satisfy a reasonable person as to—

(a) the death that is the subject of the leave sought, and

(b) the relationship of the employee to the deceased person.

3.—FLEXI-LEAVE

The following provisions shall be read in conjunction with the existing flexitime Clause 16 (Hours) provisions in the PSA 1992. These provisions replace Clause 16 (3)(h)(i) and (ii) of the PSA 1992.

(1) Credit hours

(a) Credit hours in excess of the required 150 hours to a maximum of 15 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(b) Credit hours in excess of 15 hours at the end of a settlement period shall be lost.

(2) Election Periods

Flexi-time will not operate during any six (6) week election period as defined in Schedule A clause 4 (1)(a) and (2)(b).

4.—HOURS OF SERVICE—ELECTION PERIODS

The following provisions shall be read in conjunction with the existing Clause 16 (Hours) provisions in the PSA 1992.

(1) Definitions:

For the purposes of this Clause, the following terms shall have the following meanings

(a) Election Period:

The "election period" shall be a (6) six week period from the day of issue of the election writs or as determined by the Electoral Commissioner. Such time shall be typically four weeks pre-election and two weeks post election day.

(2) Prescribed Hours of Duty

(a) (i) Prescribed hours of duty to be observed by officers shall be nine hours per day during an "election period" to be worked between 7.30 am and 9.30 pm Monday to Friday as determined by the Electoral Commissioner with a lunch interval of forty-five minutes or thirty minutes.

(ii) Payment of prescribed hours as per (2)(a)(i) of this clause shall be:

(aa) seven and one half hours paid at ordinary time; and

(bb) one and one half hours paid at time and one half as per Schedule A (6)(1)(b).

(b) The Electoral Commissioner shall give notice in writing of the intention to vary the prescribed hours of duty as prescribed in Clause 16 (1) (Hours) of the PSA 1992 for officers affected by the change. Such notice shall be given as soon as practicable after the announcement of the election date which requires the prescribed hours of duty to be changed. These elections are:

General election

Referendum

Other parliamentary elections as determined by the Electoral Commissioner.

(3) Other Working arrangements

(a) Notwithstanding Clause 16 (2) (a) of the PSA 1992, where it is considered necessary to provide more productive operations, the Electoral Commissioner may authorise the operation of alternative working arrangements.

Such alternative working arrangements may include:

(i) the operation of more flexible starting and finishing times

(ii) open Saturday morning.

(4) More Flexible Starting and Finishing Times

(a) Officers will operate under a more flexible starting and finishing time system as determined by management and having regard for the operational needs of the project.

(b) Ten Hour break.

(i) An officer shall be entitled to a break of not less than ten (10) hours between the completion of work on one day and the commencement of work on the next, without loss of salary for ordinary working time occurring during such absence.

(ii) Provided that where an officer is directed to return to or continue work without the break provided in subparagraph (i) of this paragraph, then the officer shall be paid at double the ordinary rate until released from duty, or until the officer has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.

(5) Flexitime Arrangements

(a) Flexitime arrangements will not operate for the period as prescribed in sub paragraph (1)(a) of this clause.

(b) All hours in debit or credit prior to the change in prescribed hours as per subparagraph (2)(a) of this clause shall be carried over at the conclusion of the change in hours with the return to flexitime arrangements.

5.—LONG SERVICE LEAVE

The following provisions shall be read in conjunction with the existing Clause 21 (Long Service Leave) provisions in the PSA 1992.

(1) Clearance of Long Service Leave.

(a) Long service leave shall be taken within three years of leave becoming due except as provided in (b) of this clause.

(b) Deferral

(i) The Electoral Commissioner may approve the deferral of an officer taking an entitlement of long service leave beyond three years in exceptional circumstances. Exceptional

circumstances shall include the proposed retirement of an officer within five years of the date of accrual of the entitlement.

(ii) Application for the deferral of an entitlement of long service leave shall be made in writing and referred to the Electoral Commissioner before the third anniversary of the accrual of the entitlement.

(iii) Approval to defer the taking of long service leave given in accordance with paragraph (1)(b) (ii) may be withdrawn or varied at any time by the Electoral Commissioner. The officer must be given notice in writing of the withdrawal or variation.

(2) Minimum period of Long Service Leave

(i) The portion of long service leave taken on full or half pay shall be not less than two (2) weeks entitlement.

(ii) Portions of long service leave in excess of two weeks shall be in multiples of weekly entitlements;

provided that if less than four (4) weeks remain, the remaining balance shall be taken as one period of leave.

6.—OVERTIME ALLOWANCE

The following provisions shall be read in conjunction with the existing Clause 18 (Overtime) provisions in the PSA 1992.

(1) Definitions:

For the purposes of this Clause, the following terms shall have the following meanings:

(a) "Prescribed hours of duty" means an officer's normal working hours as prescribed by the Electoral Commissioner in accordance with Schedule A (4) (Hours of Service—Election Periods), of this Agreement and as per clause 16 (1) (Hours) of the PSA 1992.

(b) Standard Overtime:

"Standard Overtime" shall mean the one and one half hours of overtime worked each day outside the prescribed hours as per Clause 16(1) (Hours) of the PSA 1992, during the "election period" and shall be calculated at time and one half (as per clause 18 (Overtime) PSA 1992).

(c) Other Overtime:

(i) All other overtime outside the prescribed hours of duty as per (1)(a) of this clause and which is paid at time and one half for the overtime projects as defined in (ii) of this subclause and which may occur within the term of this Agreement.

(ii) Other overtime projects are defined as:

(aa) 1997 State General Election

(bb) First two(2) by-elections in any calendar year.

(cc) Perth Royal Show

(dd) Local Government Roll Closure

(ee) All other incidental periods of overtime.

(iii) Any other period of overtime arising from exceptional circumstances and not covered by (ii) above, shall be paid in accordance with clause 18 (Overtime) of the PSA 1992. Such overtime periods can include but is not limited to:

(aa) By-elections in excess of two (2) per calendar year

(bb) Boundary redistribution

(cc) Any period in excess of the "election period" as defined in Schedule A, Clause (4)(1)(a) of this Agreement.

(dd) Local Government Postal Voting Elections

(d) Commuted Overtime Allowance:

Commuted overtime allowance shall be a commuted payment of 2.25% per employee per fortnight which is an allowance for overtime as identified in paragraphs (i) and (ii) of this subclause. Such allowance comprises:

(i) Standard overtime as defined in subclause (1)(b) of this clause.

(ii) The difference between time and one half and double time based on actual hours overtime worked in the 1993 General election and 1994/1995 financial year.

(2) Commuted Allowance:

(a) A commuted allowance shall be paid in lieu of overtime worked for:

(i) six (6) weeks standard overtime period as defined in subclause 1(a) and (b) of this clause; and

(ii) the difference between all 'other overtime' as defined in subclauses (1)(c)(i) and (ii) of this clause, being paid as per Clause 18 of the PSA 1992 and subclause 3 of this clause.

(b) Such commuted allowance will be paid as a component of an officer's annual salary and paid from the registration of this Enterprise Agreement..

(3) Payment for Other Overtime

This clause replaces Clause 18 (2)(d) of the PSA 1992 when referring to "other overtime" only.

Payment for 'other overtime' as defined in subclause (1)(c)(i) and (ii) of this clause shall be calculated on an hourly basis in accordance with the following formula:

All hours worked outside the prescribed hours of duty as prescribed in Schedule A, clause 4—Hours of Service—Election Periods of this Agreement and as per clause 16 (1) of the PSA 1992 on any one day at the rate of time and one half:

$$\text{i.e.} \quad \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

7.—PARENTAL LEAVE

The following provisions shall replace in full the Maternity Leave Clause 23 of the PSA 1992.

(1) Definitions:

(a) Adoption—in relation to a child, is a reference to a child who:

(i) is not the natural child or the step child of the officer or the officer's spouse;

(ii) is less than 5 years of age: and

(iii) has not lived continuously with the officer for 6 months or longer.

(b) Continuous service—means service under an unbroken contract of employment and includes:

(i) any period of parental leave.

(ii) any period during which the officer is absent on full pay or part pay from duties in the Public Service but does not include:

(aa) any period exceeding two weeks during which the officer is absent on leave without pay, except where leave without pay is approved for the purpose of fulfilling an obligation by the Government of Western Australia to provide staff for a particular assignment external to the Public Sector of Western Australia.

(bb) any service of a Cadet whilst undertaking full time studies.

(c) Expected date of Birth—means the day certified by a medical practitioner to be the day on which the medical practitioner expects the officer or the officer's spouse, as the case may be, to give birth to a child.

(d) Parental Leave—means leave provided for by Subclause (2) of this Clause.

(e) Spouse—includes a Defacto spouse.

(2) Entitlement

(a) Subject to Subclauses (4), (5)(a) and (6)(a), an officer, other than a casual officer, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of:

(i) the birth of a child to the officer or the officer's spouse; or

(ii) the placement of a child with the officer with a view to the adoption of the child by the officer.

(b) An officer is not entitled to take parental leave unless he or she has given the employer at least 10 weeks' written notice of his or her intention to take the leave.

(c) An officer is not entitled to take parental leave at the same time as the employee's spouse but the subclause does not apply to one week's parental leave;:

(i) taken by the male parent immediately after the birth of the child; or

(ii) taken by the officer and the officer's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the officer's spouse in relation to the same child except the period of one week's leave referred to in Subclause (2)(c).

(e) An officer proceeding on parental leave may elect to take a shorter period of parental leave in accordance with subclause (2)(a) of this clause, and may at any time during that period of leave elect to extend or reduce the period of the original application within the limitations of the provisions of subclause (2)(c) and (3) of this clause.

(f) An officer proceeding on parental leave may elect to utilise:

(i) accrued annual leave

(ii) accrued long service leave

for the whole or part of the period referred to in subclause (2)(a) of this clause. The periods of leave referred to in paragraphs (i) and (ii) of this subclause which are utilised, shall be paid leave.

(g) Absence of an officer which has been permitted in accordance with the provisions of this clause shall not be deemed absence on sick leave.

(3) Maternity Leave to Start 6 Weeks Before Birth

(a) A female officer who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave six (6) weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the officer is fit to work.

(b) Where an officer has not applied for leave in accordance with the provisions of this clause, and does not have express approval of the Electoral Commissioner for continued employment, the Electoral Commissioner may direct the officer to take maternity leave, and may determine the date on which such leave shall commence. Should the officer not comply with the directions, disciplinary action may be taken against her.

(4) Medical Certificate

An officer who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the officer or the officer's spouse, as the case may be, is pregnant and the expected date of birth.

(5) Notice of Spouse's Parental Leave

(a) An officer who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the officer's spouse in relation to the same child.

(b) Any notice given under subclause (5) (a) is to be supported by a statutory declaration by the officer as to the truth of the particulars notified.

(6) Notice of Parental Leave Details

(a) An officer who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the officer wishes to start and finish the leave.

(b) An officer who is taking parental leave is to notify the employer of any change to the date on which the officer wishes to finish the leave.

(c) The starting and finishing date of a period of parental leave are to be agreed between the officer and the Electoral Commissioner.

(7) Transfer to a Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

(b) If the transfer to a safe position is not practicable, the employee may take leave for such a period as is certified necessary by a registered medical practitioner.

(8) Return to Work

(a) An employee shall confirm his or her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of parental leave.

(b) On finishing parental leave, an officer is entitled to the position he or she held immediately before starting parental leave.

(c) If the position referred to in Subclause (8) (b) is not available, the officer is entitled to an available position:

(i) for which the officer is qualified; and

(ii) that the officer is capable of performing,

most comparable in status and pay to that of his or her former position.

(9) Effect of Parental Leave on Employment

Absence on parental Leave:

(a) does not break the continuity of service of an officer; and

(b) is not to be taken into account when calculating the period of service for a purpose of salary increments, sick leave credits, long service leave and annual leave.

(10) Part Time Officers

A part-time officer shall have the same entitlement to maternity leave as full time officers.

(11) Fixed Term Officers

An officer employed on a fixed term contract shall have the same entitlement to maternity leave, however the period of leave granted shall not extend beyond the term of that contract.

8.—PUBLIC SERVICE HOLIDAY DAYS IN LIEU

(1) The following two days shall be known as Public Service Holiday days in lieu.

(a) The day immediately following the New Years Day public holiday and the Tuesday immediately following Easter Monday public holiday.

(b) Such public service holiday days in lieu are as prescribed by Circular to CEO's No. 5/94 (21 January 1994—Public Service Commission)

(2) The two (2) days as per (1)(a) of this clause shall—

(a) be taken as days in lieu at ordinary time.

(b) be accrued on the day they fall due and shall not be taken prior to their respective accrual day.

(c) be cleared by 31 December in the year which the days fell due, meaning the days in lieu are not cumulative; and

(d) not be accrued whilst an employee is on any period of leave without pay.

(3) Part-time and Contract Employees

(a) Part-time and contract employees shall be granted the days as per (1) (a) of this clause providing—

(i) they ordinarily work on those days that are the days in question; and

(ii) pro-rata hours are granted in accordance with the hours ordinarily worked on those days that are the days in question.

(4) Casual Employees

The days as per (1) (a) of this clause shall not apply to employees employed under a casual contract.

(5) Termination of an employee

(a) If an employee's employment is terminated as a result of resignation, retirement, dismissal, redundancy or death, the employee or the deceased employee's estate or dependant, shall receive payment at normal time in lieu of the days as per (1)(a) of this clause providing—

(i) The days in question have not been taken as days in lieu prior to the termination date.

(ii) The employee has accrued the days in question.

(6) Clearance of the days as per (1)(a) of this clause shall be granted at the convenience of the Commission.

9.—SICK AND SPECIAL LEAVE

The following provisions shall be read in conjunction with the existing Clause 22 (Sick Leave) provisions in the PSA 1992.

(1) Definitions:

(a) Special Leave: "Special Leave" shall mean any leave relating to:

(i) Illness or injury of a family member as defined

(ii) Family responsibilities of an urgent or unplanned nature

(iii) Tribal/ceremonial purposes.

(b) Accrued leave: is the leave an officer is entitled to from a previous entitlement year.

(c) Pro-rata leave: is the proportion of leave to which an officer is entitle to in the current entitlement year, from the date of commencement, or to the date of cessation.

(d) Entitlement year: An entitlement year relates to an officer's commencement date in the service and the following 12 month period.

(2) Entitlement:

This clause replaces Clause 22(1)(a) of the PSA 1992.

Sick leave credits which shall be cumulative, shall be available all at full pay.

(a) On the day of initial appointment—45 hours (6 days)

(b) On completion of 6 months continuous service—48.75 hours (6.5 days)

(c) On completion of 12 months continuous service—93.75 hours (12.5 days)

(d) On completion of further 12 months continuous service—93.75 hours (12.5 days)

(3) Employees shall have available to them ten (10) days (75 hours) pro-rata sick leave credits for his/her own sick leave purposes for each entitlement year, effective from the commencement of this Agreement.

(4) Special Leave

Portions of sick leave as per the PSA 1992, may be used as special leave as follows.

(a) Employees may use up to five (5) days sick leave per entitlement period from the signing of this Agreement for special leave as defined in subclause (1) of this clause.

Provided that—

(i) No more than two and one half days (18 hours and 45 minutes) of **pro-rata** sick leave credits are used per entitlement year for the purposes of special leave.

(b) Special leave shall be available on an hourly basis.

(c) The granting of special leave is subject to approval by the Electoral Commissioner.

(d) The Electoral Commissioner reserves the right to request documentary evidence regarding the purpose of leave requested.

SCHEDULE B—SALARY SCHEDULE

Level	PS Award		WAEC EA 1996 Repackaging 3.2% 1.1.96		WAEC EA 1996 3.8% Increase 1.1.96		WAEC EA 1996 2.25% Increase 1.10.96	
	P/A	F/N	P/A	F/N	P/A	F/N	P/A	F/N
LEVEL 1								
Under 17 yrs	$10,873	$416.86	$11,221	$430.20	$11,647	$446.54	$11,909	$456.58
17 yrs	$12,707	$487.17	$13,114	$502.78	$13,612	$521.87	$13,918	$533.60
18 yrs	$14,822	$568.26	$15,296	$586.44	$15,877	$608.71	$16,234	$622.40
19 yrs	$17,157	$657.78	$17,706	$678.83	$18,379	$704.64	$18,793	$720.51
20 yrs	$19,267	$738.67	$19,884	$762.34	$20,640	$791.32	$21,104	$809.11
21 yrs or 1st yr of adult srvce	$21,165	$811.44	$21,842	$837.40	$22,672	$869.23	$23,182	$888.78
22 yrs or 2nd yr of adult srvce	$21,817	$836.43	$22,515	$863.21	$23,371	$896.02	$23,897	$916.19
23 yrs or 3rd yr of adult srvce	$22,468	$861.39	$23,187	$888.97	$24,068	$922.75	$24,610	$943.53
24 yrs or 4th yr of adult srvce	$23,115	$886.20	$23,855	$914.58	$24,761	$949.32	$25,318	$970.67
25 yrs or 5th yr of adult srvce	$23,766	$911.16	$24,527	$940.34	$25,459	$976.08	$26,032	$998.04
26 yrs or 6th yr of adult srvce	$24,417	$936.12	$25,198	$966.07	$26,156	$1,002.80	$26,745	$1,025.38
27 yrs or 7th yr of adult srvce	$25,166	$964.83	$25,971	$995.71	$26,958	$1,033.55	$27,565	$1,056.82
28 yrs or 8th yr of adult srvce	$25,684	$984.69	$26,506	$1,016.22	$27,513	$1,054.82	$28,132	$1,078.56
29 yrs or 9th yr of adult srvce	$26,450	$1,014.06	$27,296	$1,046.51	$28,333	$1,086.26	$28,970	$1,110.69
LEVEL 2								
1st yr	$27,367	$1,049.21	$28,243	$1,082.81	$29,316	$1,123.95	$29,976	$1,149.25
2nd yr	$28,070	$1,076.17	$28,968	$1,110.61	$30,069	$1,152.82	$30,746	$1,178.78
3rd yr	$28,809	$1,104.50	$29,731	$1,139.86	$30,861	$1,183.18	$31,555	$1,209.79
4th yr	$29,590	$1,134.44	$30,537	$1,170.76	$31,697	$1,215.24	$32,410	$1,242.57
5th yr	$30,407	$1,165.76	$31,380	$1,203.08	$32,572	$1,248.78	$33,305	$1,276.89
LEVEL 3								
1st yr	$31,530	$1,208.82	$32,539	$1,247.52	$33,775	$1,294.90	$34,535	$1,324.04
2nd yr	$32,405	$1,242.36	$33,442	$1,282.14	$34,713	$1,330.87	$35,494	$1,360.81
3rd yr	$33,307	$1,276.95	$34,373	$1,317.83	$35,679	$1,367.90	$36,482	$1,398.69
4th yr	$34,233	$1,312.45	$35,328	$1,354.45	$36,670	$1,405.90	$37,495	$1,437.53
LEVEL 4								
1st yr	$35,503	$1,361.14	$36,639	$1,404.71	$38,031	$1,458.08	$38,887	$1,490.89
2nd yr	$36,498	$1,399.28	$37,666	$1,444.08	$39,097	$1,498.95	$39,977	$1,532.68
3rd yr	$37,522	$1,438.54	$38,723	$1,484.61	$40,194	$1,541.00	$41,098	$1,575.66

Level	PS Award		WAEC EA 1996 Repackaging 3.2% 1.1.96		WAEC EA 1996 3.8% Increase 1.1.96		WAEC EA 1996 2.25% Increase 1.10.96	
	P/A	F/N	P/A	F/N	P/A	F/N	P/A	F/N
LEVEL 5								
1st yr	$39,494	$1,514.15	$40,758	$1,562.63	$42,307	$1,622.01	$43,259	$1,658.51
2nd yr	$40,827	$1,565.25	$42,133	$1,615.34	$43,734	$1,676.72	$44,718	$1,714.45
3rd yr	$42,212	$1,618.35	$43,563	$1,670.17	$45,218	$1,733.62	$46,235	$1,772.61
4th yr	$43,649	$1,673.44	$45,046	$1,727.03	$46,758	$1,792.66	$47,810	$1,832.99
LEVEL 6								
1st yr	$45,960	$1,762.04	$47,431	$1,818.46	$49,233	$1,887.55	$50,341	$1,930.03
2nd yr	$47,531	$1,822.27	$49,052	$1,880.61	$50,916	$1,952.08	$52,062	$1,996.01
3rd yr	$49,157	$1,884.61	$50,730	$1,944.94	$52,658	$2,018.86	$53,843	$2,064.29
4th yr	$50,893	$1,951.17	$52,522	$2,013.65	$54,518	$2,090.17	$55,745	$2,137.22
LEVEL 7								
1st yr	$53,555	$2,053.23	$55,269	$2,118.97	$57,369	$2,199.48	$58,660	$2,248.97
2nd yr	$55,397	$2,123.85	$57,170	$2,191.85	$59,342	$2,275.12	$60,677	$2,326.30
3rd yr	$57,401	$2,200.68	$59,238	$2,271.13	$61,489	$2,357.44	$62,873	$2,410.50
LEVEL 8								
1st yr	$60,658	$2,325.55	$62,599	$2,399.99	$64,978	$2,491.20	$66,440	$2,547.25
2nd yr	$62,991	$2,414.99	$65,007	$2,492.31	$67,477	$2,587.01	$68,995	$2,645.21
3rd yr	$65,884	$2,525.90	$67,992	$2,606.76	$70,576	$2,705.82	$72,164	$2,766.71
LEVEL 9								
1st yr	$69,497	$2,664.42	$71,721	$2,749.72	$74,446	$2,854.20	$76,121	$2,918.41
2nd yr	$71,938	$2,758.01	$74,240	$2,846.30	$77,061	$2,954.45	$78,795	$3,020.93
3rd yr	$74,722	$2,864.74	$77,113	$2,956.45	$80,043	$3,068.78	$81,844	$3,137.83

Notes:

The increase on the 1 January 1996 consists of:

3.2% for repackaging of conditions to which is added a further 3.8% for productivity improvements.

F/N salary formula = per annum salary divided by 26.083 pays

The rounding principles has been applied to each formula: PA at 0 decimal points and F/N at 2 decimal points.

SCHEDULE C—GRIEVANCE/DISPUTE SETTLING PROCEDURES

(1) Objective

To ensure that all Grievances/disputes as defined in (2)(a) of this schedule which are raised by employees of the Western Australian Electoral Commission are resolved in a fair, equitable and expedient manner.

(2) Definition

(a) A grievance/dispute may arise as a result of any questions, disputes or difficulties raised by employees in respect to their employment conditions and/or environment. These may include:

(i) Interpretation of provisions of the PSA 1992,

(ii) Decisions made in respect of human resource policies and practices;

(iii) Safety issues;

(iv) Any form of harassment, discrimination or victimisation of employees not covered by specified grounds under the Equal Opportunity Act 1984 as listed in subclause (b) of this clause.

(b) Grievances/disputes arising from discrimination or victimisation on the grounds of gender, race, marital status, pregnancy, age, sexual preference, religious belief, political conviction, family responsibility or disability as specified under the Equal Opportunity Act 1984 will continue to be dealt with by the Commission's Harassment Prevention Policy 1989.

(c) Grievances/disputes of a sexual harassment nature as defined by the Equal Opportunity Act 1984 will continue to be dealt with by the Commission's Harassment Prevention Policy 1989.

(d) Grievances/disputes arising out of an interpretation of provisions of the Western Australian Electoral Commission Enterprise Agreement 1996 will be dealt with under clause 17 of this Agreement.

(3) Resolution Principles

(a) In resolving a grievance/dispute, the following principles must be adhered to:

(i) All officers have the right to raise their grievance in order to achieve a fair and expedient resolution.

(ii) Where possible, grievances should be resolved informally and quickly by the parties directly involved.

(iii) Confidentiality should be maintained at all times in the resolution of a grievance/dispute.

(iv) The principles of natural justice should apply in the resolution process:

(v) The officer lodging a grievance/dispute has the option to terminate the process at any time.

(vi) At any point in this process, the officer is entitled to his/her representation from the union.

(4) Submission Of Grievance

(a) Any officer who considers that he/she has grounds for a grievance may raise the grievance with a supervisor, manager or other appropriate person.

(b) The grievance will be raised as soon as practicable after arising to ensure a rapid resolution of the grievance.

Where:

(i) The grievance is not resolved by the supervisor or manager within ten (10) working days; or

(ii) it is not appropriate to raise the grievance with the supervisor or manager

the matter may be referred to the Manager, Corporate Services. Any matter so referred will be replied to within seven (7) working days.

(5) Confidentiality

(a) At all times the highest confidentiality must be maintained in resolving a grievance or dispute.

(b) Any documentation concerning the grievance or dispute shall be held on a "Grievance/Dispute Resolution" file maintained in the Corporate Services Branch. No additional copies of correspondence will be held on any other source, including wordprocessors.

(c) Access to the "Grievance/Dispute Resolution" file will be limited to the Electoral Commissioner or his/her delegate.

WESTERN AUSTRALIAN STATE EMERGENCY SERVICE ENTERPRISE AGREEMENT 1996 No. PSA AG 124 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State Emergency Service

and

The Civil Service Association of Western Australia Incorporated.

No. PSA AG 124 of 1996.

PUBLIC SERVICE ARBITRATOR C.B. PARKS.

6 June 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSA AG 124 of 1996

HAVING heard Ms R. Devenish and with her Mr P. Connell on behalf of the first named party and Ms J. Blake on behalf of the second named party and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the document titled the Western Australian State Emergency Service Enterprise Agreement 1996, filed in the Commission on 17 May 1996, and as thereafter amended and submitted in proceedings on 4 June 1996, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

AGREEMENT

1.—TITLE

This Agreement shall be known as the Western Australian State Emergency Service Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Definitions
5. Date and Period of Operation of the Agreement
6. Audit of 4% Second Tier 1989 Structural Efficiency Principles
7. Commuted Overtime—Regional Managers
8. No Further Claims
9. Relationship to Parent Awards and Agreements
10. Single Bargaining Unit
11. Continuous improvement
12. Payment and milestones for productivity improvement
13. Future Issues for Negotiations
14. Productivity Measurement
15. Sick and Family Support Leave
16. Annual Leave Loading
17. Salary Increases
18. Dispute Settlement Procedure
19. Signatures of Parties to the Agreement

Schedule A : Salary
Schedule B : Agreed Hours
Schedule C : Conditions pertaining to Agreed Hours
Schedule D : Matrix of Target Dates for Key Corporate Objectives

3.—SCOPE AND PARTIES TO THE AGREEMENT

This Agreement shall be binding on the Chief Executive Officer of the Western Australian State Emergency Service and all Western Australian State Emergency Service permanent employees who are members of or eligible to be members of the Civil Service Association of Western Australia Incorporated.

As at the 31 March 1996, 42 employees were subject to this agreement.

4.—DEFINITIONS

"Agreement": the Western Australian State Emergency Service Enterprise Agreement 1996.

"Department": Western Australian State Emergency Service.

"Employee": for the purpose of this agreement, someone who is referred to at Clause 3—Scope.

"Employer": Chief Executive Officer of the Western Australian State Emergency Service.

"Government": the State Government of Western Australia.

"Minister": the Minister for Emergency Services.

"Operational overtime" : this category of overtime differs from the Award as it applies to officers required to work outside of normal hours during emergencies only.

"Association": the Civil Service Association of Western Australia.

5.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(a) This agreement shall operate from the date of registration of this agreement and shall remain in operation for a period of 18 months.

(b) The parties will review this agreement six months prior to the expiration of this agreement to commence negotiations for a new agreement.

(c) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(d) The pay quantum achieved as a result of this agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.

(e) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the Western Australian Industrial Relations Commission.

6.—AUDIT OF 4% SECOND TIER 1989 STRUCTURAL EFFICIENCY PRINCIPLES

The parties agree that matters arising from previous award changes emanating from the Restructuring and Efficiency Principle of 1987, and the Structural Efficiency Principles of the 1988 and the 1989 National State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of the Agreement.

7.—COMMUTED OVERTIME—REGIONAL MANAGERS

Following the termination of this agreement the Regional Managers will have the option to revert to the commuted overtime conditions negotiated in 1985 unless another agreement has been registered.

8.—NO FURTHER CLAIMS

(a) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

(b) This agreement shall not operate so as to cause an employee to suffer a reduction in the rate of ordinary time earnings.

9.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This agreement shall be read in conjunction with the Public Service Award 1992 which applies to the parties bound to this agreement. The Award shall apply to areas not covered by this agreement. In the case of any inconsistencies, this agreement shall have precedence to the extent of the inconsistencies.

10.—SINGLE BARGAINING UNIT

(a) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(b) The SBU comprised representatives from Department and the Association.

11.—CONTINUOUS IMPROVEMENT

This enterprise agreement has been designed to improve the business processes and performance of the Department by introducing new program structures with shared objectives:

(a) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(b) To achieve the Department's Mission and improve productivity and efficiency in the Department through ongoing improvements.

(c) To promote the development of trust and motivation and to continue to foster enhanced employee relations.

(d) To facilitate greater flexibility in decision making and allocation of human and other resources.

(e) To promote increased satisfaction from jobs.

(f) To develop and pursue changes on a co-operative continuing basis by using participative practices.

(g) To promote health, safety, welfare and equal opportunity for all employees.

12.— MILESTONES FOR PRODUCTIVITY IMPROVEMENT

The Mission of the Department is to assist the community to cope with natural or man made emergencies. The parties agree that increased productivity will be achieved through the implementation of agreed quality management concepts, including team based approaches to improve efficiency. To attain increased productivity the parties agree to achieve the following objectives for the life of this agreement, (Schedule D denotes the target dates to be met):

1. To develop and implement an integrated management system.

1.1. Design computerised management systems for integrating training, emergency operations, asset management, travel, purchasing and supply, document management, finance and budgeting, vehicles and human resource management. Computer applications will be written by Departmental staff.

Milestone: January 1997

Benefits: The advantage to the organisation will be the ability to utilise a new integrated management system with less duplication of data thus saving time and personnel. The reporting facilities will be more appropriate and enable management and volunteer units to access information more readily. Other emergency services will use the capabilities developed avoiding duplication of services.

1.2. A complete review of the Department's vehicle requirements will be undertaken and a vehicle acquisition management system implemented.

Milestones: July 1996 and February 1997.

Benefits: An organised plan for vehicle management, allocation, equipping and replacement for all Departmental vehicles including the 80 volunteers units will save time and money by ensuring accurate specifications for cars, four wheel drive vehicles, trucks, trailers, specialised vehicles and caravans are met.

1.3. An evaluation of the requirements, design and implementation of a new record management system.

Milestones: May 1996.

Benefits: More expedient retrieval of information.

2. To undertake the development and implementation of a strategic human resource plan.

2.1. Policies, practices and procedures will be revised and new ones developed to encompass job design, recruitment, training and development, health and safety, induction and rewards.

Milestones: March 1997.

Benefits: Better definition and recognition of different roles and functions of staff. With these new policies and practices the workforce will be better equipped to perform the required functions

2.2. A comprehensive study will be undertaken to analyse work practices and a performance appraisal system developed.

Milestones: April 1997.

Benefits: Recognition and rewards for responsibilities leading to improvement in staff morale.

2.3. A human resources competency model will be devised linking Job Description Form's with training and performance management.

Milestones: May 1997.

Benefits: Improved measurement of staff performance and training programmes designed to meet targeted needs.

2.4. Investigation and development of staff relief guidelines incorporating employees financial, personal and family commitments.

Milestones: July 1996.

Benefits: Staff will be better equipped to fulfil a range of positions which will help to increase staff morale.

2.5. Training programmes will be written for identified areas of need, these will include leadership, induction and specialised skills training for various staff positions.

Milestones: October 1996.

Benefits: Staff will be able to undertake their responsibilities more quickly after taking office and be better equipped to execute their duties with maximum effectiveness

3. To develop a Western Australian State Emergency Service training philosophy and policy.

3.1. An analysis of Departmental volunteer duties and competencies required will be undertaken. A plan will be devised and strategies developed for a competency based training curriculum with recognition of prior learning.

Milestones: March 1996.

Benefits: Increased volunteer participation which will allow more efficient use of permanent staff time.

3.2. A comprehensive submission will be prepared which will identify and outline the process for developing training needs for staff.

Milestones: September 1996.

Benefits: Staff will be better prepared to fulfil their responsibilities.

3.3. The Departmental training packages presently utilised will be evaluated to enable them to be adapted to become competency based with the recognition of prior learning.

Milestones: Three packages will be completed by June 1997.

Benefits: A more efficient delivery of service by Departmental staff.

4. To enhance the Western Australian State Emergency Service data and voice communications capabilities.

4.1. An information technology strategy to implement a system whereby all regional offices have access to shared information via a state wide Departmental computer network will be developed.

Milestones: March 1996.

Benefits: Elimination of some paper documents and the work associated with filing and a quicker and interactive response from all staff.

4.2. Implementation of a medium and long range communication plan for volunteer Units in State Headquarters and two Regions in Western Australia.

Milestones: October 1996.

Benefits: Faster response time for Departmental approved roles and better support for other agencies involved in bushfires, searches, vehicle and cliff rescue. This will potentially result in the saving of lives. Other emergency agencies will utilise this system thus preventing duplication and freeing up resources.

5. To enhance the level of public information, operational media liaison and promotion services to the stakeholders of the Western Australian State Emergency Service.

5.1. A comprehensive survey of media needs will be undertaken and strategies implemented to target newspapers, radio and television with region specific information.

Milestones: May 1996.

Benefits: Public information can be more efficiently released. Media releases will achieve maximise effectiveness.

5.2. A review will be conducted and staff trained to enable information relating to emergencies to be gathered and disseminated more quickly.

Milestones: December 1996.

Benefits: Stakeholders can be kept informed and given information more quickly and professionally which will help with the prevention and preparedness for emergencies within the Departmental responsibilities.

5.3. A survey of public requirements will be undertaken to ascertain the most effective means of dissemination of education and information on lead combat authority issues and staff trained to work with the media and the community.

Milestones: November 1996.

Benefits: Timely public information leading to better preparedness by the community for emergencies and active promotion of the Mission and Objectives of the Department.

6. To increase the effectiveness and efficiency of the Western Australian State Emergency Service workforce.

6.1. Key work practices will be examined to identify areas where greater efficiencies can be obtained within the Department.

Milestones: Commence April 1996.

Benefits: Elimination of services not necessary to maintain core business

6.2. Employees in operational positions shall commit to working an agreed annualised program of hours. This program of hours includes a commitment from employees in nominated positions to work an agreed number of hours outside of normal working hours. These annual program out of hours are specified, by position, in attached Schedule B. The conditions that apply to the operation of this initiative are specified in attached Schedule C. The salary payable by both classification level and annualised programmed hours is reflected in Schedule A. The aim of this initiative will be to save administrative time and to improve organisational flexibility in service delivery for volunteer contact.

Milestones: July 1996.

Benefits: Better allocation of resources and use of staff time.

6.3. Out of hours worked during emergencies will be paid at 1.5 times the hourly rate for all officers required to work in response to an emergency.

Milestones: July 1996.

Benefits: A saving to the organisation in money paid for operational overtime.

6.4. Investigate, develop and implement an out of hours activation system for the Department's Headquarters.

Milestones: April 1996.

Benefits: Reduced response time and better customer service

13.—FUTURE ISSUES FOR NEGOTIATIONS

The parties agree to establish a Departmental Productivity Reform and Review Group, this group will be established by April 1996. The membership will be a representative from the Executive, two Regional representatives and two representatives from State Headquarters. The Regional and State representatives will be nominated by the Department's staff. The function of the group will be to monitor workplace change and provide the Department's executive with recommendations for better and more cost effective service delivery.

During the life of this agreement the Department's Productivity Reform and Review Group will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future agreements.

14.—PRODUCTIVITY MEASUREMENT

(a) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Department to management, employees and other relevant stakeholders.

(b) The parties agree to assess organisational performance according to the extent to which the objectives of the Department are achieved. The parties agree that performance indicators have a primary role to identify the attainment of corporate goals in the interests of clients, employees, the Department and the government on behalf of the community.

(c) It is agreed that the employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

(d) A productivity measurement tool will be developed by the Department before the expiry of this agreement. It will be designed so that levels of performance for the organisation can be measured through the identification of performance indicators.

15.—SICK AND FAMILY SUPPORT LEAVE

Sick leave shall include family support leave. Up to a maximum of 5 days per annum can be taken on a non accumulation basis to support family members who are suffering ill health. Family members shall include spouse, defacto spouse, child, parent or fellow dweller. Sick leave entitlements, including the requirement for a medical certificate for self or family member, remain as outlined in the award.

16.—ANNUAL LEAVE LOADING

Annual leave loading shall be paid fortnightly.

17.—SALARY INCREASES

(a) The following salary increases will take effect from three months prior to the date this agreement is lodged with the WAIRC. The increases are payable on the basis of implementation and continued cooperation of those improvements in productivity and work practice changes outlined in Clause 11—Milestones for Productivity Improvement

(b) The following increases as contained in the schedule A attached will be payable during the life of this Agreement:

1.1 an increase of 4% three months prior to the date of lodgement in the WAIRC;

1.2 a further increase of 2% six months after the first increase has been paid. This is to be paid for the introduction of the workplace reform schedule B;

1.3 a further increase of 1% six months following the second increase in recognition of the commitment and savings resulting from the reduction in overtime payment to officers responding to emergencies and

1.4 a further increase of 1% six months after the third increase has been awarded for the achievement of the strategies within the six key corporate objectives.

18.—DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this Industrial Agreement will be dealt with in accordance with the following procedures;

(a) The Association's representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by an Association Representative.

(b) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (a) hereof the matter shall be referred by the Association's Representative to the Department's Chief Executive Officer or his/her nominee for resolution.

(c) If the matter is not resolved within 5 working days of the Association's Representative's notification of the dispute to the Department it may be referred by either party to the Western Australian Industrial Relations Commission.

19.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the

CIVIL SERVICE ASSOCIATION WESTERN AUSTRALIAN BRANCH by:

(Signed by D. Robinson) (Seal affixed)

Dated the 15th day of May 1996

Signed for and on behalf of the

WESTERN AUSTRALIAN STATE EMERGENCY SERVICE by:

(Signed by R. Dyson)

Dated the 14th day of May 1996.

Schedule A: Salary

	Present salary		First Increase 4% increase		Second Increase 2% increase		Third Increase 1% increase		Fourth Increase 1% increase	
	Fortnight	Annual	Fortnight	Annual	Hour	Annual	Hour	Annual	Hour	Annual
Class 4	$3,510.29	$91,560.00	$3,650.70	$95,222.40	$49.65	$97,126.85	$50.15	$98,098.12	$50.65	$99,079.10
Class 3	$3,348.88	$87,350.00	$3,482.84	$90,844.00	$47.37	$92,660.88	$47.84	$93,587.49	$48.32	$94,523.36
Class 2	$3,187.55	$83,142.00	$3,315.05	$86,467.68	$45.08	$88,197.03	$45.54	$89,079.00	$45.99	$89,969.79
Class 1	$3,026.15	$78,932.00	$3,147.19	$82,089.28	$42.80	$83,731.07	$43.23	$84,568.38	$43.66	$85,414.06
Level 9										
1st Year	$2,664.42	$69,497.00	$2,771.00	$72,276.88	$37.69	$73,722.42	$38.06	$74,459.64	$38.44	$75,204.24
2nd Year	$2,758.01	$71,938.00	$2,868.33	$74,815.52	$39.01	$76,311.83	$39.40	$77,074.95	$39.79	$77,845.70
3rd Year	$2,864.74	$74,722.00	$2,979.33	$77,710.88	$40.52	$79,265.10	$40.92	$80,057.75	$41.33	$80,858.33
Level 8										
1st Year	$2,325.55	$60,658.00	$2,418.57	$63,084.32	$32.89	$64,346.01	$33.22	$64,989.47	$33.55	$65,639.36
2nd Year	$2,414.99	$62,991.00	$2,511.59	$65,510.64	$34.16	$66,820.85	$34.50	$67,489.06	$34.84	$68,163.95
3rd Year	$2,525.90	$65,884.00	$2,626.94	$68,519.36	$35.73	$69,889.75	$36.08	$70,588.64	$36.44	$71,294.53
Level 7										
1st Year	$2,053.23	$53,555.00	$2,135.36	$55,697.20	$29.04	$56,811.14	$29.33	$57,379.26	$29.62	$57,953.05
2nd Year	$2,123.85	$55,397.00	$2,208.80	$57,612.88	$30.04	$58,765.14	$30.34	$59,352.79	$30.64	$59,946.32
3rd Year	$2,200.68	$57,401.00	$2,288.70	$59,697.04	$31.13	$60,890.98	$31.44	$61,499.89	$31.75	$62,114.89
Level 6										
1st Year	$1,762.04	$45,960.00	$1,832.53	$47,798.40	$24.92	$48,754.37	$25.17	$49,241.91	$25.42	$49,734.33
2nd Year	$1,822.27	$47,531.00	$1,895.17	$49,432.24	$25.77	$50,420.88	$26.03	$50,925.09	$26.29	$51,434.34
3rd Year	$1,884.61	$49,157.00	$1,960.00	$51,123.28	$26.66	$52,145.75	$26.92	$52,667.20	$27.19	$53,193.88
4th Year	$1,951.17	$50,893.00	$2,029.22	$52,928.72	$27.60	$53,987.29	$27.87	$54,527.17	$28.15	$55,072.44
Level 5 1950 hrs										
1st Year	$1,514.15	$39,494.00	$1,574.71	$41,073.76	$21.42	$41,895.24	$21.63	$42,314.19	$21.85	$42,737.33
2nd Year	$1,565.25	$40,827.00	$1,627.86	$42,460.08	$22.14	$43,309.28	$22.36	$43,742.37	$22.58	$44,179.80
3rd Year	$1,618.35	$42,212.00	$1,683.09	$43,900.48	$22.89	$44,778.49	$23.12	$45,226.27	$23.35	$45,678.54
4th Year	$1,673.44	$43,649.00	$1,740.38	$45,394.96	$23.67	$46,302.86	$23.91	$46,765.89	$24.14	$47,233.55
Level 5 2100 hrs										
1st Year	$1,514.15	$39,494.00	$1,574.71	$41,073.76	$25.62	$50,113.66	$25.87	$50,614.80	$26.13	$51,120.95
2nd Year	$1,565.25	$40,827.00	$1,627.86	$42,460.08	$26.48	$51,805.10	$26.75	$52,323.15	$27.01	$52,846.38
3rd Year	$1,618.35	$42,212.00	$1,683.09	$43,900.48	$27.38	$53,562.51	$27.65	$54,098.14	$27.93	$54,639.12
4th Year	$1,673.44	$43,649.00	$1,740.38	$45,394.96	$28.31	$55,385.91	$28.60	$55,939.77	$28.88	$56,499.17
Level 5 2000 hrs										
1st Year	$1,514.15	$39,494.00	$1,574.71	$41,073.76	$22.77	$44,545.48	$23.00	$44,990.93	$23.23	$45,440.84
2nd Year	$1,565.25	$40,827.00	$1,627.86	$42,460.08	$23.54	$46,048.97	$23.77	$46,509.46	$24.01	$46,974.56
3rd Year	$1,618.35	$42,212.00	$1,683.09	$43,900.48	$24.34	$47,611.12	$24.58	$48,087.23	$24.83	$48,568.11
4th Year	$1,673.44	$43,649.00	$1,740.38	$45,394.96	$25.17	$49,231.92	$25.42	$49,724.24	$25.67	$50,221.48
Level 4 1950 hrs										
1st Year	$1,361.14	$35,503.00	$1,415.58	$36,923.12	$19.25	$37,661.58	$19.44	$38,038.20	$19.64	$38,418.58
2nd Year	$1,399.28	$36,498.00	$1,455.26	$37,957.92	$19.79	$38,717.08	$19.99	$39,104.25	$20.19	$39,495.29
3rd Year	$1,438.54	$37,522.00	$1,496.08	$39,022.88	$20.35	$39,803.34	$20.55	$40,201.37	$20.76	$40,603.38
Level 4 2100 hrs										
1st Year	$1,361.14	$35,503.00	$1,415.58	$36,923.12	$23.03	$45,049.51	$23.26	$45,500.00	$23.49	$45,955.00
2nd Year	$1,399.28	$36,498.00	$1,455.26	$37,957.92	$23.67	$46,312.06	$23.91	$46,775.18	$24.15	$47,242.93
3rd Year	$1,438.54	$37,522.00	$1,496.08	$39,022.88	$24.34	$47,611.40	$24.58	$48,087.52	$24.83	$48,568.39
Level 3 1950 hrs										
1st Year	$1,208.82	$31,530.00	$1,257.17	$32,791.20	$17.10	$33,447.02	$17.27	$33,781.49	$17.44	$34,119.31
2nd Year	$1,242.36	$32,405.00	$1,292.06	$33,701.20	$17.57	$34,375.22	$17.75	$34,718.98	$17.93	$35,066.17
3rd Year	$1,276.95	$33,307.00	$1,328.02	$34,639.28	$18.06	$35,332.07	$18.24	$35,685.39	$18.42	$36,042.24
4th Year	$1,312.45	$34,233.00	$1,364.95	$35,602.32	$18.56	$36,314.37	$18.75	$36,677.51	$18.94	$37,044.29
Level 3 2100 hrs										
1st Year	$1,208.82	$31,530.00	$1,257.17	$32,791.20	$20.45	$40,008.20	$20.66	$40,408.28	$20.86	$40,812.36
2nd Year	$1,242.36	$32,405.00	$1,292.06	$33,701.20	$21.02	$41,118.48	$21.23	$41,529.66	$21.44	$41,944.96
3rd Year	$1,276.95	$33,307.00	$1,328.02	$34,639.28	$21.60	$42,263.02	$21.82	$42,685.65	$22.04	$43,112.51
4th Year	$1,312.45	$34,233.00	$1,364.95	$35,602.32	$22.20	$43,438.02	$22.43	$43,872.40	$22.65	$44,311.12
Level 3 2025 hrs										
1st Year	$1,208.82	$31,530.00	$1,257.17	$32,791.20	$22.42	$36,674.18	$22.65	$37,040.92	$22.88	$37,411.33
2nd Year	$1,242.36	$32,405.00	$1,292.06	$33,701.20	$23.05	$37,691.94	$23.28	$38,068.86	$23.51	$38,449.55
3rd Year	$1,276.95	$33,307.00	$1,328.02	$34,639.28	$23.69	$38,741.10	$23.93	$39,128.51	$24.16	$39,519.80
4th Year	$1,312.45	$34,233.00	$1,364.95	$35,602.32	$24.35	$39,818.18	$24.59	$40,216.36	$24.84	$40,618.53
Level 3 1975 hrs										
1st Year	$1,208.82	$31,530.00	$1,257.17	$32,791.20	$17.61	$34,485.70	$17.79	$34,830.56	$17.96	$35,178.86
2nd Year	$1,242.36	$32,405.00	$1,292.06	$33,701.20	$18.10	$35,442.72	$18.28	$35,797.15	$18.46	$36,155.12
3rd Year	$1,276.95	$33,307.00	$1,328.02	$34,639.28	$18.60	$36,429.28	$18.79	$36,793.57	$18.98	$37,161.51
4th Year	$1,312.45	$34,233.00	$1,364.95	$35,602.32	$19.12	$37,442.08	$19.31	$37,816.50	$19.51	$38,194.67
Level 2 1950 hrs										
1st Year	$1,049.21	$27,367.00	$1,091.18	$28,461.68	$14.84	$29,030.91	$14.99	$29,321.22	$15.14	$29,614.43
2nd Year	$1,076.17	$28,070.00	$1,119.21	$29,192.80	$15.22	$29,776.66	$15.37	$30,074.42	$15.53	$30,375.17
3rd Year	$1,104.50	$28,809.00	$1,148.68	$29,961.36	$15.62	$30,560.59	$15.78	$30,866.19	$15.94	$31,174.86
4th Year	$1,134.44	$29,590.00	$1,179.82	$30,773.60	$16.05	$31,389.07	$16.21	$31,702.96	$16.37	$32,019.99
5th Year	$1,165.76	$30,407.00	$1,212.39	$31,623.28	$16.49	$32,255.75	$16.65	$32,578.30	$16.82	$32,904.09
Level 2 2000										
1st Year	$1,049.21	$27,367.00	$1,091.18	$28,461.68	$15.78	$30,867.37	$15.94	$31,176.05	$16.10	$31,487.81
2nd Year	$1,076.17	$28,070.00	$1,119.21	$29,192.80	$16.18	$31,660.29	$16.35	$31,976.89	$16.51	$32,296.66
3rd Year	$1,104.50	$28,809.00	$1,148.68	$29,961.36	$16.61	$32,493.81	$16.78	$32,818.75	$16.94	$33,146.94
4th Year	$1,134.44	$29,590.00	$1,179.82	$30,773.60	$17.06	$33,374.71	$17.23	$33,708.45	$17.40	$34,045.54
5th Year	$1,165.76	$30,407.00	$1,212.39	$31,623.28	$17.53	$34,296.20	$17.71	$34,639.17	$17.88	$34,985.56

	Present salary		First Increase 4% increase		Second Increase 2% increase		Third Increase 1% increase		Fourth Increase 1% increase	
	Fortnight	Annual	Fortnight	Annual	Hour	Annual	Hour	Annual	Hour	Annual
Level 1 1950 hrs										
U/17 Years	$416.86	$10,873.00	$433.53	$11,307.92	$5.90	$11,534.08	$5.95	$11,649.42	$6.01	$11,765.91
17 Years	$487.17	$12,707.00	$506.66	$13,215.28	$6.89	$13,479.59	$6.96	$13,614.38	$7.03	$13,750.53
18 Years	$568.26	$14,822.00	$590.99	$15,414.88	$8.04	$15,723.18	$8.12	$15,880.41	$8.20	$16,039.21
19 Years	$657.78	$17,157.00	$684.09	$17,843.28	$9.30	$18,200.15	$9.40	$18,382.15	$9.49	$18,565.97
20 Years	$738.67	$19,267.00	$768.22	$20,037.68	$10.45	$20,438.43	$10.55	$20,642.82	$10.66	$20,849.25
1st Year/21 Years	$811.44	$21,165.00	$843.90	$22,011.60	$11.48	$22,451.83	$11.59	$22,676.35	$11.71	$22,903.11
2nd Year/22 Years	$836.43	$21,817.00	$869.89	$22,689.68	$11.83	$23,143.47	$11.95	$23,374.91	$12.07	$23,608.66
3rd Year/23 Years	$861.39	$22,468.00	$895.85	$23,366.72	$12.18	$23,834.05	$12.31	$24,072.39	$12.43	$24,313.12
4th Year/24 Years	$886.20	$23,115.00	$921.65	$24,039.60	$12.53	$24,520.39	$12.66	$24,765.60	$12.79	$25,013.25
5th Year/25 Years	$911.16	$23,766.00	$947.60	$24,716.64	$12.89	$25,210.97	$13.02	$25,463.08	$13.15	$25,717.71
6th Year/26 Years	$936.12	$24,417.00	$973.56	$25,393.68	$13.24	$25,901.55	$13.37	$26,160.57	$13.51	$26,422.17
7th Year/27 Years	$964.83	$25,166.00	$1,003.42	$26,172.64	$13.65	$26,696.09	$13.78	$26,963.05	$13.92	$27,232.68
8th Year/28 Years	$984.69	$25,684.00	$1,024.08	$26,711.36	$13.93	$27,245.59	$14.07	$27,518.04	$14.21	$27,793.22
9th Year/29 Years	$1,014.06	$26,450.00	$1,054.62	$27,508.00	$14.34	$28,058.16	$14.49	$28,338.74	$14.63	$28,622.13
Level 1 1975 hrs										
U/17 Years	$416.86	$10,873.00	$433.53	$11,307.92	$6.07	$11,880.47	$6.13	$11,999.27	$6.20	$12,119.27
17 Years	$487.17	$12,707.00	$506.66	$13,215.28	$7.10	$13,884.40	$7.17	$14,023.25	$7.24	$14,163.48
18 Years	$568.26	$14,822.00	$590.99	$15,414.88	$8.28	$16,195.38	$8.36	$16,357.33	$8.45	$16,520.90
19 Years	$657.78	$17,157.00	$684.09	$17,843.28	$9.58	$18,746.73	$9.68	$18,934.20	$9.78	$19,123.54
20 Years	$738.67	$19,267.00	$768.22	$20,037.68	$10.76	$21,052.24	$10.87	$21,262.76	$10.98	$21,475.39
1st Year/21 Years	$811.44	$21,165.00	$843.90	$22,011.60	$11.82	$23,126.10	$11.94	$23,357.37	$12.06	$23,590.94
2nd Year/22 Years	$836.43	$21,817.00	$869.89	$22,689.68	$12.19	$23,838.52	$12.31	$24,076.90	$12.43	$24,317.67
3rd Year/23 Years	$861.39	$22,468.00	$895.85	$23,366.72	$12.55	$24,549.84	$12.67	$24,795.34	$12.80	$25,043.29
4th Year/24 Years	$886.20	$23,115.00	$921.65	$24,039.60	$12.91	$25,256.79	$13.04	$25,509.36	$13.17	$25,764.45
5th Year/25 Years	$911.16	$23,766.00	$947.60	$24,716.64	$13.27	$25,968.11	$13.41	$26,227.79	$13.54	$26,490.07
6th Year/26 Years	$936.12	$24,417.00	$973.56	$25,393.68	$13.64	$26,679.43	$13.77	$26,946.22	$13.91	$27,215.68
7th Year/27 Years	$964.83	$25,166.00	$1,003.42	$26,172.64	$14.06	$27,497.83	$14.20	$27,772.81	$14.34	$28,050.53
8th Year/28 Years	$984.69	$25,684.00	$1,024.08	$26,711.36	$14.35	$28,063.83	$14.49	$28,344.46	$14.63	$28,627.91
9th Year/29 Years	$1,014.06	$26,450.00	$1,054.62	$27,508.00	$14.77	$28,900.80	$14.92	$29,189.81	$15.07	$29,481.71
Level 1 2025 hrs										
U/17 Years	$416.86	$10,873.00	$433.53	$11,307.92	$6.46	$12,646.95	$6.53	$12,773.42	$6.59	$12,901.15
17 Years	$487.17	$12,707.00	$506.66	$13,215.28	$7.56	$14,780.17	$7.63	$14,927.97	$7.71	$15,077.25
18 Years	$568.26	$14,822.00	$590.99	$15,414.88	$8.81	$17,240.24	$8.90	$17,412.64	$8.99	$17,586.77
19 Years	$657.78	$17,157.00	$684.09	$17,843.28	$10.20	$19,956.20	$10.30	$20,155.76	$10.41	$20,357.32
20 Years	$738.67	$19,267.00	$768.22	$20,037.68	$11.46	$22,410.45	$11.57	$22,634.55	$11.69	$22,860.90
1st Year/21 Years	$811.44	$21,165.00	$843.90	$22,011.60	$12.58	$24,618.11	$12.71	$24,864.29	$12.84	$25,112.94
2nd Year/22 Years	$836.43	$21,817.00	$869.89	$22,689.68	$12.97	$25,376.49	$13.10	$25,630.25	$13.23	$25,886.55
3rd Year/23 Years	$861.39	$22,468.00	$895.85	$23,366.72	$13.36	$26,133.70	$13.49	$26,395.03	$13.63	$26,658.99
4th Year/24 Years	$886.20	$23,115.00	$921.65	$24,039.60	$13.74	$26,886.26	$13.88	$27,155.12	$14.02	$27,426.67
5th Year/25 Years	$911.16	$23,766.00	$947.60	$24,716.64	$14.13	$27,643.47	$14.27	$27,919.90	$14.41	$28,199.10
6th Year/26 Years	$936.12	$24,417.00	$973.56	$25,393.68	$14.52	$28,400.68	$14.66	$28,684.69	$14.81	$28,971.53
7th Year/27 Years	$964.83	$25,166.00	$1,003.42	$26,172.64	$14.96	$29,271.88	$15.11	$29,564.60	$15.26	$29,860.25
8th Year/28 Years	$984.69	$25,684.00	$1,024.08	$26,711.36	$15.27	$29,874.39	$15.42	$30,173.14	$15.58	$30,474.87
9th Year/29 Years	$1,014.06	$26,450.00	$1,054.62	$27,508.00	$15.73	$30,765.37	$15.88	$31,073.02	$16.04	$31,383.75

Note 1. Second, third and fourth increases reflect annualised salary agreement, the first increase will be calculated accordingly from July 1 1996.
Note 2 : Calculations are based on Schedule B, 1.8 times the normal salary rate for programmed out of hours work.

Schedule B: Agreed Hours by Position

NAME	ANNUAL PROGRAMMED OUT OF HOURS	ANNUAL AGREED TOTAL HOURS
Executive Officer	0	
Manager Finance & Administration	0	1950
Manager Information Technology	100	2000
H R Co-ordinator	0	1950
Supply & Equipment Officer	50	1975
Finance Officer.	0	1950
Executive Assistant	50	1975
Senior Clerk	0	1950
Stores Officer	150	2025
Clerk	0	1950
Volunteer Support Officer	0	1950
Receptionist	0	1950
Relieving Clerk	0	1950
Manager Communications	300	2100
Manager Operations	300	2100
Manager Training	300	2100
Regional Manager	300	2100
Assistant Regional Manager	300	2100
Communications Officer	300	2100
Training Officer	300	2100
Operations Officer	300	2100
Public Relations Officer	150	2025
Comm. Liaison Officer	300	2100
Support Officer	100	2000
Receptionist (Kimberley)	50	1975

Schedule C

The conditions attached to schedule B are—

- As per the Award unless indicated otherwise.
- Each position attracts an annualised salary, the incumbent is responsible for ensuring the position's programmed activities are undertaken in the hours allocated.
- 12 monthly programs will be submitted to the CEO annually to demonstrate how the position's program of activities will be managed, this will be reviewed regularly to ensure the utilisation of the time is consistent with the spirit and intent of this agreement.
- Staff may elect to take the extra hours accumulated as a result of working the programmed hours in single or multiple periods or choose to work shorter days. Time off must take into consideration work area and departmental requirements.
- Approved overtime worked other than programmed or operational will be paid in accordance with the award.
- A position's program of activities will incorporate all leave requirements of the occupant. The person acting in the position during the period of leave will be expected to carry out the duties scheduled over that period of leave. Staff may decline to act if they feel they are being disadvantaged by such acting.
- It is expected that long service and annual leave will be taken during times when out of normal hours

activities are at a minimum. Staff will not be required to make up for programmed out of hours activities falling within their leave period.

- When the program of activities has been published for the year, any future commitment of the employee to be scheduled on a specific date during that period must be by mutual agreement, with the exclusion of emergency operations
- In the event of acting or a temporary transfer, staff would receive the annualised salary for the position or portion thereof depending on any modified list of duties agreed prior to the acting/transfer commencing.
- Operational overtime is to be worked in accordance with the Department's Mission and Functions consistent with Departmental policy, operation instructions and standing operating procedures.

Schedule D

Matrix of Target Dates for Productivity Initiatives.

	Obj 1	Obj 2	Obj 3	Obj 4	Obj 5	Obj 6
Mar 1996			Plan for competency based training for volunteers.	Networking computer facilities partially implemented.		Commence development of productivity measuring tool.
Apr 1996	Commence design of integrated management system.	Commence Human Resources Strategic Plan.			Data gathered for surveys.	1. Implement emergency activation system—staff. 2. Examination of key work practices. 3. Productivity reform group commenced.
May 1996	Record management system implemented.				Survey of media needs.	
Jun 1996						
Jul 1996	Review vehicle requirements.	Staff relief guidelines.				Introduction of annualised hours and salary.
Aug 1996						
Sep 1996			Staff training needs analysis.			
Oct 1996		Staff training programmes.		Implement communication plan.		
Nov 1996					Needs analysis and training staff to work with the media.	
Dec 1996					Survey and training staff to gather and disseminate information.	
Jan 1997	Integrated management system.					
Feb 1997	Vehicle acquisition system.					
Mar 1997		Human Resources strategic plan.				
Apr 1997		Performance appraisal system.				
May 1997		Human Resources competency model.				
Jun 1997			Competency based training —3 packages completed.			Productivity measuring tool completed.

AWARDS/AGREEMENTS— Variation of—

AIR CONDITIONING AND REFRIGERATION INDUSTRY (CONSTRUCTION AND SERVICING) AWARD.

No. 10 of 1979.

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

Direct Engineering Services Pty Ltd and Others.

No. 411 of 1996.

Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979.

No. 10 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

29 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the applicant and Mr M. Creedy 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 Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979 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 15th May 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1. Clause 29.—Wages: Delete paragraph (c) in subclause (1) and paragraph (a) in subclause (2) of this Clause and insert in lieu thereof the following:

(c) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 adjustments.

(2) (a)

Classification	Base Rate	Special Payment	1st, 2nd & 3rd Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$	$
Instrument Fitter	380.10	80.00	24.00	484.10
Welder—Special Class	371.40	80.00	24.00	475.40
Welder	362.80	80.00	24.00	466.80
Tradesperson	362.80	80.00	24.00	466.80
Refrigeration Fitter	362.80	80.00	24.00	466.80
Boilermaker—Structural Steel Tradesperson	362.80	80.00	24.00	466.80

Classification	Base Rate	Special Payment	1st, 2nd & 3rd Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$	$
Sheetmetal Employee—				
First Class	362.80	80.00	24.00	466.80
Second Class—1st six months in industry	310.20	64.30	24.00	398.50
Thereafter	327.20	66.80	24.00	418.00
Certificated Rigger or Scaffolder	345.70	68.90	24.00	438.60
Rigger or Scaffolder—				
Other	334.70	67.60	24.00	426.30
Tool and Material Storeperson	322.90	65.80	24.00	412.70
Tradesperson's Assistant	310.20	64.30	24.00	398.50
Tradesperson's Assistant who from time to time uses a grinding machine	311.70	65.80	24.00	401.50
Lagger—				
1st six months' experience	310.20	63.40	24.00	397.60
2nd & 3rd six months' experience	311.70	65.40	24.00	401.10
4th & 5th six months' experience	315.90	65.60	24.00	405.50
Thereafter	317.40	66.60	24.00	408.00

BP REFINERY (KWINANA) (SECURITY OFFICERS') AWARD, 1978
No. R 56 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

B.P. Refinery (Kwinana) Pty Ltd and Another.

No. 316 of 1996.

BP Refinery (Kwinana) (Security Officers') Award, 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr L. Joyce on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months will have elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1 and 2);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the BP Refinery (Kwinana) (Security Officers') Award, 1978 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 24th day of July, 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

Schedule.

Clause 20.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) The minimum rate of pay for officers under this award shall be as follows:

	Base Rate	Arbitrated Safety Net Adjustments 1, 2 and 3	Award Rate
	$	$	$
Security Officer (First 12 months)	407.70	24.00	431.70
Security Officer (Thereafter)	421.80	24.00	445.80

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

BREWERY CRAFTSMEN AGREEMENT, 1979
No. C368A of 1979.

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

Swan Brewery Co Ltd & Others.

No. 172 of 1996.

Brewery Craftsmen Agreement, 1979
No. C368A of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

24 May 1996.

Order.

HAVING heard Mr C. Young 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 G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr S. Foy on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Brewery Craftsmen Agreement, 1979 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
Senior Commissioner.

[L.S]

Schedule.

1. PART A—SWAN BREWERY COMPANY LIMITED

A. Schedule D—named Parties to the Award: Delete this clause and insert in lieu thereof the following:

SCHEDULE D—NAMED PARTIES TO THE AWARD

Unions Party to the Award

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch,

Employers Party to the Award

Swan Brewery Company Limited

B. Clause 11.—Duty Away From Home and Travelling: Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) Where the employer does not supply transport the employer will pay all fares reasonably incurred by the employee in travelling in excess of the fares normally incurred in travelling between home and the accustomed workshop. In the case of an employee using his/her own vehicle he/she shall be paid 32 cents for each kilometre so travelled.

C. Clause 16.—Overtime: Delete subclause (3) of this Clause and insert in lieu thereof the following:

(3) All employees covered by this Agreement, if required to work overtime for more than one hour after the normal finishing time, shall be entitled to a meal allowance of $5.40.

A similar meal allowance shall be paid to those employees whose rostered overtime period on a Saturday or Sunday is extended beyond the time for a normal meal break prescribed by this Agreement.

D. Clause 20.—Shift Work: Delete paragraph (b) of subclause (6) of this Clause and insert in lieu thereof the following:

(b) When a continuous shift employee is required to work overtime which extends beyond one hour after the usual finishing time he/she shall be allowed a meal break of 20 minutes which shall be counted as time worked and supplied with a meal or paid $5.40.

2. PART B—EMPLOYERS OTHER THAN SWAN BREWERY CO.LIMITED

A. Second Schedule—Named Parties to the Award: Delete this Clause and insert in lieu thereof the following:

SECOND SCHEDULE—NAMED PARTIES TO THE AWARD

Unions Party to the Award

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Employers Party to the Award

Joe White Maltings Limited

B. Clause 6.—Overtime: Delete subclause (3) of this Clause and insert in lieu thereof the following:

(3) All workers covered by this Agreement, if required to work overtime for more than one hour after the normal finishing time, shall be entitled to a meal allowance of $5.40.

A similar meal allowance shall be apid to those workers whose rostered overtime period on a Saturday or Sunday is extended beyond the time for a normal meal break prescribed by this Agreement.

C. Clause 12.—Duty Away From Home and Travelling: Delete the second paragraph and insert in lieu thereof the following:

Where the employer does not supply transport the employer will pay all fares reasonably incurred by the worker in travelling in excess of the fares normally incurred in travelling between home and the accustomed workshop. In the case of a worker using his/her own vehicle he/she shall be paid 32 cents for each kilometre so travelled.

BUILDING TRADES (CONSTRUCTION) AWARD 1987
No. R 14 of 1978.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Adsigns Pty Ltd and Others.

No. 486 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER A.R. BEECH.

9 May 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application for the third arbitrated safety net adjustment to be inserted into the Building Trades (Construction) Award 1987. The second arbitrated safety net adjustment was inserted by Order of the Commission on 7th June 1995 (75 WAIG 2154). The application proceeded by consent and the Commission is satisfied that the parties have met the tests set out in the State Wage Principles ((1996) 76 WAIG 911 at 926).

The only issue which is not agreed is that of operative date. The third $8.00 arbitrated safety net adjustment is available at the award level from no earlier than the 22nd March 1996 provided that at least twelve months has elapsed between the second and third award level arbitrated safety net increases. In this case the application before the Commission was lodged on the 25th March 1996. It was called on for hearing on the 15th April 1996. The union seeks a retrospective date of operation whilst the respondents, members of the Chamber of Commerce and Industry of Western Australia, who appeared in these proceedings argued for a current date.

In my view it is appropriate to determine the issue of date of operation on the same basis as that determined for the second arbitrated safety net adjustment. On that occasion the Commission canvassed the various issues involved and concluded that the merit of the argument lay in awarding an operative date from the beginning of the first pay period commencing on or after the date upon which the matter was called on for hearing. I respectfully adopt the reasoning of the Commission on that occasion and for the same reasons will award an operative date based upon the 15th April 1996.

When the second arbitrated safety net adjustment was awarded the Commission noted that it was necessary for two operative dates to be prescribed. The first is for those employees for whom the first arbitrated safety net adjustment applied in accordance with the December 1993 State Wage Decision. The second operative date is for those employees for whom the first arbitrated safety net applied according to the December 1994 State Wage Decision six months from the date the

award was amended. For reasons of consistency the same verbiage will be used in this Order.

Accordingly the award will be varied, in the first case, from the beginning of the first pay period commencing on or after the 15th April 1996 and, in relation to the second case, from the beginning of the first pay period commencing on or after the 28th September 1996.

The Minute of a Proposed Order now issues.

Appearances: Mr G. Giffard on behalf of the applicant.

Mr W. Tracey on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

Mr K. Dwyer 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

Adsigns Pty Ltd and Others.

No. 486 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER A.R. BEECH.

14 May 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Dwyer on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

(1) THAT the Building Trades (Construction) Award 1987, No. R 14 of 1978 as amended be further varied in the terms of the following Schedule.

(2) THAT such amendments shall take effect from the beginning of the first pay period commencing on or after the 15th day of April 1996 in respect of employees who received the first arbitrated safety net adjustment as a result of the December 1993 State Wage Case Decision, and from the beginning of the first pay period commencing on or after the 28th day of September 1996 in respect of employees who received the first arbitrated safety net adjustment as a result of the December 1994 State Wage Case Decision.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 8.—Rates of Pay: Delete subclause (2) of this clause and insert in lieu the following:

(2) Weekly Rate: The following amounts shall be applied for the purpose of the calculation in subclause (4) of this clause of the hourly rate to apply under this Award.

		Base Rate $	Supplementary Payment $	Arbitrated Safety Net Adjustment $	Weekly Rate $
(a) (i)	Bricklayers, stoneworkers, stonemasons, carpenters, joiners, painters, signwriters, glaziers, and plasterers roof tile fixers	365.20	52.10	24.00	441.30
(ii)	Plumber and/or gasfitter	368.00	52.10	24.00	444.10
(iii)	Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act: Base Rate $368.00 Reg. Allowance $ 17.30	385.30	52.10	24.00	461.40
(iv)	Marker/Setter Out	378.60	52.10	24.00	454.70
(v)	Special Class Tradesman	385.00	52.10	24.00	461.10
(b) (i)	Group 1				
	Rigger	362.30	52.10	24.00	438.40
	Drainer	362.30	52.10	24.00	438.40
	Dogman	362.30	52.10	24.00	438.40
(ii)	Group 2				
	Scaffolder	346.70	52.10	24.00	422.80
	Powder Monkey	346.70	52.10	24.00	422.80
	Hoist or Winch Driver	346.70	52.10	24.00	422.80
	Concrete Finisher	346.70	52.10	24.00	422.80
	Steel Fixer including Tack Welder	346.70	52.10	24.00	422.80
	Concrete Pump Operator	346.70	52.10	24.00	422.80
(iii)	Group 3				
	Bricklayer's Labourer	335.10	52.10	24.00	411.20
	Plasterer's Labourer	335.10	52.10	24.00	411.20
	Assistant Powder Monkey	335.10	52.10	24.00	411.20
	Assistant Rigger	335.10	52.10	24.00	411.20
	Demolition Worker (after three months' experience)	335.10	52.10	24.00	411.20
	Gear Hand	335.10	52.10	24.00	411.20
	Cement Gun Operator	335.10	52.10	24.00	411.20
	Concrete Cutting or Drilling Machine Operator	335.10	52.10	24.00	411.20
	Pile Driver	335.10	52.10	24.00	411.20
	Tackle Hand	335.10	52.10	24.00	411.20
	Jackhammer Hand	335.10	52.10	24.00	411.20
	Mixer Driver (Concrete)	335.10	52.10	24.00	411.20
	Steel Erector	335.10	52.10	24.00	411.20
	Aluminium Alloy Structural Erector	335.10	52.10	24.00	411.20
	Gantry Hand or Crane Hand	335.10	52.10	24.00	411.20
	Concrete Gang Including Concrete Floater	335.10	52.10	24.00	411.20
	Steel or Bar Bender to Pattern or Plan	335.10	52.10	24.00	411.20
	Concrete Formwork Stripper	335.10	52.10	24.00	411.20
	Concrete Pump Hose Hand	335.10	52.10	24.00	411.20
(iv)	Group 4				
	Builders' Labourers Employed on Work Other Than Specified in Classifications (i) to (iii)	306.60	52.10	24.00	382.70

(c) Supplementary Payments

Supplementary payments set out in this clause represent payments in lieu of equivalent overaward payments.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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. Clause 8.—Rates of Pay: In subclause (3) of this clause delete the amount of $15.90 and insert in lieu the amount of $16.20.

3. Clause 8.—Rates of Pay: In subclause (8) of this clause delete the amount of $7.80 and insert in lieu the amount of $7.95.

4. Clause 8.—Rates of Pay: In subclause (9) of this clause delete the amount of $12.70 and insert in lieu the amount of $12.90.

5. Clause 8.—Rates of Pay: Delete paragraph (10)(a) of this clause and insert in lieu the following:

(10) Leading Hands

(a) A person specifically appointed to be a leading hand shall be paid at the rate of the undermentioned additional amounts above the rate of the highest classification supervised, or his/her own rate, whichever is the highest, in

accordance with the number of persons in his/her charge—

		Weekly Base Only $	Rate Per Hour $
(i)	In charge of not more than one person	10.40	0.28
(ii)	In charge of two and not more than five persons	23.10	0.63
(iii)	In charge of six and not more than ten persons	29.30	0.80
(iv)	In charge of more than ten persons	39.10	1.06

6. Clause 8.—Rates of Pay: In subclause (11) of this clause delete the amount of $24.90 and insert in lieu the amount of $25.35.

7. Clause 8.—Rates of Pay: In subclause (12) of this clause delete the amounts of 35 cents and 34 cents and insert in lieu the amounts of 36 cents and 36 cents respectively.

8. Clause 8.—Rates of Pay: In subclause (13) of this clause delete the amount of $1.12 and insert in lieu the amount of $1.14.

9. Clause 8.—Rates of Pay: In subclause (14) of this clause delete the amount of 78 cents and insert in lieu the amount of 79 cents.

10. Clause 9.—Special Rates and Provisions: In paragraph (1)(a) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

11. Clause 9.—Special Rates and Provisions: In paragraph (1)(b) of this clause delete the amounts of 37 cents and 45 cents and insert in lieu the amounts of 38 cents and 46 cents respectively.

12. Clause 9.—Special Rates and Provisions: In paragraph (1)(c) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

13. Clause 9.—Special Rates and Provisions: In paragraph (1)(d) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

14. Clause 9.—Special Rates and Provisions: Delete paragraph (1)(e) of this clause and insert in lieu the following:

(e) Swing Scaffold—

(i) an employee required to work from any type of swing or any scaffold suspended by rope or cable, bosun's chair, or suspended scaffold requiring use of steel or iron hooks or angle irons shall be paid the appropriate allowance set out below corresponding to the storey level at which the anchors or bracing, from which the stage is suspended, has been erected.

Such allowance shall be paid for minimum of four hours' work or part thereof until construction work (as defined) has been completed.

Height of Bracing	First Four Hours	Each Additional Hour
0-15 storeys	2.68	0.55
16-30 storeys	3.43	0.71
31-45 storeys	4.05	0.83
46-60 storeys	6.66	1.38
Greater than 60 storeys	8.49	1.75

Provided that an apprentice with less than two years' experience shall not use a swing scaffold or bosun's chair, and further provided that solid plasterers when working off a swing scaffold shall receive an additional 11 cents per hour.

15. Clause 9.—Special Rates and Provisions: In paragraph (1)(f) of this clause delete the amount of 86 cents and insert in lieu the amount of 88 cents.

16. Clause 9.—Special Rates and Provisions: In paragraph (1)(g) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

17. Clause 9.—Special Rates and Provisions: In paragraph (1)(h) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

18. Clause 9.—Special Rates and Provisions: In paragraph (1)(i) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

19. Clause 9.—Special Rates and Provisions: In subparagraph (1)(j)(iii) of this clause delete the amounts of 45 cents and 37 cents and insert in lieu the amounts of 46 cents and 38 cents respectively.

20. Clause 9.—Special Rates and Provisions: In paragraph (1)(l) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

21. Clause 9.—Special Rates and Provisions: In paragraph (1)(m) of this clause delete the amount of 97 cents and insert in lieu the amount of 99 cents.

22. Clause 9.—Special Rates and Provisions: In paragraph (1)(n) of this clause delete the amount of 97 cents and insert in lieu the amount of 99 cents.

23. Clause 9.—Special Rates and Provisions: In paragraph (1)(o) of this clause delete the amount of 34 cents and insert in lieu the amount of 35 cents.

24. Clause 9.—Special Rates and Provisions: In paragraph (1)(p) of this clause delete the amount of 34 cents and insert in lieu the amount of 35 cents.

25. Clause 9.—Special Rates and Provisions: In paragraph (1)(q) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

26. Clause 9.—Special Rates and Provisions: In paragraph (1)(r) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

27. Clause 9.—Special Rates and Provisions: In paragraph (1)(s) of this clause delete the amount of $2.63 and insert in lieu the amount of $2.68.

28. Clause 9.—Special Rates and Provisions: In paragraph (1)(t) of this clause delete the amount of $1.57 and insert in lieu the amount of $1.60.

29. Clause 9.—Special Rates and Provisions: In placitum (1)(u)(i)(bb) of this clause delete the amount of 35 cents and insert in lieu the amount of 36 cents.

30. Clause 9.—Special Rates and Provisions: In subparagraph (1)(u)(ii) of this clause delete the amounts of $1.56 and 69 cents and insert in lieu the amounts of $1.59 and 70 cents respectively.

31. Clause 9.—Special Rates and Provisions: In subparagraph (1)(u)(iii) of this clause delete the amount of $1.92 and insert in lieu the amount of $1.95.

32. Clause 9.—Special Rates and Provisions: In paragraph (1)(v) of this clause delete the amount of $1.55 and insert in lieu the amount of $1.58.

33. Clause 9.—Special Rates and Provisions: In subparagraph (1)(w)(i) of this clause delete the amounts of 37 cents, 64 cents and 92 cents and insert in lieu the amounts of 38 cents, 65 cents and 94 cents respectively.

34. Clause 9.—Special Rates and Provisions: In paragraph (1)(x) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

35. Clause 9.—Special Rates and Provisions: In paragraph (1)(y) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

36. Clause 9.—Special Rates and Provisions: In paragraph (1)(z) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

37. Clause 9.—Special Rates and Provisions: In paragraph (1)(aa) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

38. Clause 9.—Special Rates and Provisions: In paragraph (1)(bb) of this clause delete the amount of $1.42 and insert in lieu the amount of $1.45.

39. Clause 9.—Special Rates and Provisions: In paragraph (1)(cc) of this clause delete the amount of 34 cents and insert in lieu the amount of 35 cents.

40. Clause 9.—Special Rates and Provisions: In paragraph (1)(ee) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

41. Clause 9.—Special Rates and Provisions: In paragraph (1)(ff) of this clause delete the amount of 37 cents and insert in lieu the amount of 38 cents.

42. Clause 9.—Special Rates and Provisions: In paragraph (1)(gg) of this clause delete the amount of 45 cents and insert in lieu the amount of 46 cents.

43. Clause 9.—Special Rates and Provisions: In subparagraph (1)(hh)(iii) of this clause delete the amount of $1.03 and insert in lieu the amount of $1.05.

44. Clause 9.—Special Rates and Provisions: In paragraph (1)(ii) of this clause delete the amount of $3.80 and insert in lieu the amount of $3.93.

45. Clause 10.—Multi-Storey Allowance: In subclause (3) of this clause delete the amounts of 29 cents, 36 cents, 54 cents, 69 cents and 87 cents and insert in lieu the amounts of 30 cents, 37 cents, 55 cents, 70 cents and 89 cents respectively.

46. Clause 32.—Special Tools and Protective Clothing: In paragraph (5)(b) of this clause delete the amount of $3.86 and insert in lieu the amount of $3.93.

47. Appendix B—Wagerup Alumina Refinery Construction Site: In subclause 3.—Site Allowance of this Appendix delete the amount of $1.21 and insert in lieu the amount of $1.23.

48. Appendix C—Pinjarra and Kwinana Alumina Refineries: In subclause 2.—Site Allowance of this Appendix delete the amounts of $1.25 and $1.47 and insert in lieu the amounts of $1.27 and $1.50 respectively.

49. Appendix D—North West Shelf Gas Project: In subclause 5.—Site Disability Allowance of this Appendix delete the amount of $1.37 and insert in lieu the amount of $1.39.

50. Appendix D—North West Shelf Gas Project: In subclause 6.—Special Rates of this Appendix delete the amount of $2.94 and insert in lieu the amount of $2.99.

51. Appendix D—North West Shelf Gas Project: In paragraph (a) of subclause 15.—Special Conditions of Employment Payments of this Appendix delete the amount of $123.80 and insert in lieu the amount of $126.03.

52. Appendix D—North West Shelf Gas Project: In paragraphs (h) and (i) of subclause 15.—Special Rates of this Appendix delete the amount of $2.30 and insert in lieu the amount of $2.34.

53. Appendix F—Asbestos Eradication: In subclause 5.—Rate of Pay of this Appendix delete the amount of $1.21 and insert in lieu the amount of $1.23.

54. Appendix G—Laser Equipment: In subclause 4.—Laser Safety Officer Allowance of this Appendix delete the amount of $1.50 and insert in lieu the amount of $1.53.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
and
Adsigns Pty Ltd and Others.
No. 486 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER A.R. BEECH.

6 June 1996.

Correcting Order.

PURSUANT to the powers conferred on me under the Industrial Relations Act 1979, I, the undersigned Commissioner of the Western Australian Industrial Relations Commission, hereby order—

THAT Order 47 shall be corrected by substituting the following therefor:

47. Appendix B—Wagerup Alumina Refinery Construction Site: In subclause 2.—Site Allowance of this Appendix delete the amount of $1.21 and insert in lieu the amount of $1.23.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

CAN MANUFACTURING (PRODUCTION AND MAINTENANCE-AMALGAMATED INDUSTRIES PTY LTD) AWARD 1985.

No. A 4 of 1985.

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, Western Australian Branch
and
Westcan (A Division of Amcor Ltd) and Other.
No. 505 of 1995.

Can Manufacturing (Production and Maintenance-Amalgamated Industries Pty Ltd) Award 1985.
No. A4 of 1985.

SENIOR COMMISSIONER G.G. HALLIWELL.

28 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, Mr G. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr S. Foy 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 Can Manufacturing (Production and Maintenance-Amalgamated Industries Pty Ltd) Award 1985 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 7th May 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1. Clause 2.—Arrangement:
   A. Delete the number and title "2A.—State Wage Principles—June 1991" of this Clause.
   B. After Appendix 1—Classification Structure and Definitions insert the following new title:
      Appendix 2—Named Parties to the Award.

2. Clause 2A.—State Wage Principles—June 1991: Delete this clause.

3. Clause 6.—Rates of Pay: Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) (a) Classification

	Rate Per Week $	First Aribitrated Safety Net Adjustment $	Total Per Week	Hourly Rate
(a) Toolmaker	466.60	8.00	474.60	12.4895
(b) Base Tradesperson	447.50	8.00	455.50	11.7763
(c) Intermediate Can Making Tradesperson (as defined)	466.50	8.00	474.50	12.4868
(d) Special Class Can Making Tradesperson (as defined)	473.20	8.00	481.20	12.6632
(e) Electrical Installer	447.50	8.00	455.50	11.7763
(f) Electrical Fitter	447.50	8.00	455.5	11.7763
(g) Electrician Special Class	473.20	8.00	481.20	12.6632
(h) Electrical Tradesperson's Assistant	367.80	8.00	375.80	9.8895
(i) Operator Grade 1 (as defined)	420.00	8.00	428.00	11.2632
(j) Operator Grade 2 (as defined)	400.30	8.00	408.30	10.7447
(k) Operator Grade 3 (as defined)	370.60	8.00	378.60	9.9632

(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 payable since 1 November, 1991, pursuant to enterprise agreements, consent 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.

4. After Appendix 1—Classification Structure and Definitions insert the following new Appendix:

APPENDIX 2—NAMED 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, Western Australian Branch

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Employer Party to the Award

Westcan (A Division of Amcor Ltd.) 153-159 Bannister Road, CANNING VALE W.A. 6155

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

Westcan (A Division of Amcor Ltd) and Other.

No. 505 of 1995.

Can Manufacturing (Production and Maintenance-Amalgamated Industries Pty Ltd) Award 1985.

No. A4 of 1985.

SENIOR COMMISSIONER G.G. HALLIWELL.

5 June 1996.

Correction Order.

WHEREAS an error occurred in Order No. 505 of 1995 dated 28 May, 1996 (unreported), the following correction is made:

In Clause 6.—Rates of Pay: replace paragraph (2)(a) with the following:

(2) (a) Classification

	Rate Per Week $	First Aribitrated Safety Net Adjustment $	Total Per Week $	Hourly Rate $
Toolmaker	466.60	8.00	474.60	12.4895
Base Tradesperson (as defined)	447.50	8.00	455.50	11.7763
Intermediate Can Making Tradesperson (as defined)	466.50	8.00	474.50	12.4868
Special Class Can Making Tradesperson (as defined)	473.20	8.00	481.20	12.6632
Electrical Installer	447.50	8.00	455.50	11.7763
Electrical Fitter	447.50	8.00	455.50	11.7763
Electrician Special Class	473.20	8.00	481.20	12.6632
Electrical Tradesperson's Assistant	367.80	8.00	375.80	9.8895
Operator Grade 1 (as defined)	420.00	8.00	428.00	11.2632
Operator Grade 2 (as defined)	400.30	8.00	408.30	10.7447
Operator Grade 3 (as defined)	370.60	8.00	378.60	9.9632

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

CLEANERS AND CARETAKERS AWARD, 1969
No. 12 of 1969.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Coca-Cola Bottlers Perth and Others.

No. 326 of 1996.

Cleaners and Caretakers Award, 1969.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr A. Smetana on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1, 2 and 3);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Cleaners and Caretakers Award, 1969 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 22.—Wages: Delete the preamble and paragraphs (a) and (b) of subclause (1) of this clause and insert in lieu thereof the following—

(1) The minimum total rate of wage payable under this award shall be as follows:

	Base Rate $	Arbitrated Safety Net Adjustments 1, 2 and 3 $	Award Rate $
(a) Adult Employees:			
Cleaner	340.60	24.00	364.60
Caretaker	357.20	24.00	381.20
Watchman	338.30	24.00	362.30
Watchman (Mobile)	354.20	24.00	378.20
Watchman/Cleaner	339.40	24.00	363.40
Window Cleaner	346.10	24.00	370.10
Lift Attendant	336.10	24.00	360.10
Attendant	331.70	24.00	355.70
Female Lavatory Attendant	338.80	24.00	362.80

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

CLEANERS AND CARETAKERS (CAR AND CARAVAN PARKS) AWARD 1975
No. 5 of 1975.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Kings Parking Co (WA) Pty Ltd and Others.

No. 328 of 1996.

Cleaners and Caretakers (Car and Caravan Parks) Award 1975.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr A. Smetana on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1, 2 and 3);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Cleaners and Caretakers (Car and Caravan Parks) Award 1975 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 24.—Wages: Delete the preamble and subclause (1) of this clause and insert in lieu thereof the following—

The minimum rate of wage payable under this award shall be as follows—

			Base Rate $	1, 2 & 3 Arbitrated Safety Net Adjustments $	Award Rate $
(1)	(a)	Adult Employees			
		Caretaker	357.20	24.00	381.20
		Cleaner	340.60	24.00	364.60
		Watchman	338.30	24.00	362.30
		Parking Attendant	336.10	24.00	360.10

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

CONTRACT CLEANERS AWARD, 1986
No. A6 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

Airlite Cleaning Pty Ltd and Others.

No. 330 of 1996.

Contract Cleaners Award, 1986.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr A. Smetana on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1, 2 and 3);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Contract Cleaners Award, 1986 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 20.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) The minimum total rates of wages payable to employees covered by this award shall be—

		Rate Per Week Award Wage $
(a)	Adult Employees:	
	Cleaner	388.60
	Window Cleaner	395.30
(b)	Casual Employees:	Rate Per Hour $
	Cleaner	12.27
	Window Cleaner	12.48

(c) The rates of pay in this award include three arbitrated safety net adjustments totalling

$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

CONTRACT CLEANERS' (MINISTRY OF EDUCATION) AWARD, 1990
No. A5 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Berkeley Challenge Pty Ltd and Others.

No. 331 of 1996.

Contract Cleaners' (Ministry of Education) Award, 1990.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr A. Smetana on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1, 2 and 3);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Contract Cleaners' (Ministry of Education) Award, 1990 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 20.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) The minimum weekly rate of wage payable to cleaners covered by this award shall be:

Base Rate $	Arbitrated Safety Net Adjustments 1, 2 and 3 $	Wages Per Week $
377.40	24.00	401.40

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

EARTH MOVING AND CONSTRUCTION AWARD.
No. 10 of 1963.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (Western Australian Branch)

and

Bell Basic Industries Ltd and Others.

No. 520 of 1996.

Earth Moving and Construction Award.

No. 10 of 1963.

SENIOR COMMISSIONER G.G. HALLIWELL.

4 June 1996.

Order.

HAVING heard Mr W. Tracey on behalf of the applicant and Ms S. Laferla 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 Earth Moving and Construction 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 19th April 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1. Appendix I:

A. Delete paragraph (3)(b) of this Appendix and insert in lieu thereof the following:

(b) Arbitrated Safety Net Payment

Employees shall be paid an arbitrated safety net payment of $24.00 which shall be added to the base rate specified in subclause (2) hereof for the purpose of calculating the actual weekly rate.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision.

The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 adjustments.

B. Delete the amount of $15.90 in subclause (5) of this Appendix and insert in lieu thereof $16.20.

C. After subclause (7) insert subclause (8) as follows:

(8) Allowances and Special Provisions

(a) Dirt Money

A dirt allowance of 38 cents per hour shall be payable in connection with work deemed to be more than ordinarily dirty; cases of dispute to be determined by the Board of Reference.

(b) Confined Space

Workers working in confined space shall be paid an allowance of 46 cents per hour. "Confined space" means one of which the dimensions are such that the workperson must work in an unusually stooped or cramped position or without adequate ventilation or where confinement within a limited place is productive of unusual discomfort to him/her.

(c) Wet Work

(i) Any worker working in water or "wet places" shall be paid an extra allowance of $2.97 per day or part of a day.

(ii) "Wet places" shall mean places where, in the performance of the work the splashing of water and mud saturate the worker's clothing or where protection is not provided to prevent splashings or dripping sufficient to saturate his/her clothing, and shall include wet material or wet ground in which it is impracticable for the worker wearing ordinary working boots to work without getting wet feet. Provided that this clause shall not apply to workers working on wet surfaces made wet by rain.

(iii) In exceptional cases where the work is excessively wet and which are not covered by paragraph (ii) hereof, an extra allowance my be agreed upon, or failing agreement, determined by the Board of Reference.

(iv) Subject to paragraph (iii), the engineer in charge or the foreperson shall decide whether any allowance is payable under this clause.

(v) Workers called upon to work overtime in water or in wet places shall receive an extra $2.97 or the appropriate allowance fixed by the Board of Reference for each eight hours or portion thereof, of overtime worked and such allowance shall be treated as portion of the wage for the calculation of overtime. For all other purposes, the extra payment shall be deemed an allowance.

(d) A multi-storey allowance shall be paid to all employees to whom this Appendix applies engaged on site in the construction of a multi-storey building as defined in accordance with the following—

From commencement of building to 15th floor level—30 cents per hour extra.

From 16th floor level to 30th floor level—37 cents per hour extra.

From 31st floor level to 45th floor level—55 cents per hour extra.

From 46th floor level to 60th floor level—70 cents per hour extra.

From 61st floor level onwards—90 cents per hour extra.

For the purposes of this subclause a multi-storey building means a building which will, when complete, consist of 5 or more storey levels and any other structure which does not have regular storey levels but which exceeds 15 metres in height.

2. Appendix II:

A. Delete the amount of $1.37 in subclause (5) Site Disability Allowance and insert in lieu thereof $1.39.

B. Delete the amount of $2.94 in subclause (6) Special Rates and insert in lieu thereof $2.99.

C. Delete the amount of $123.80 in subclause (14)(a) Special Conditions of Employment Payment and insert in lieu thereof $126.03.

D. Delete the amount of $2.30 in subclause (14)(h) and (i) Special Conditions of Employment Payment and insert in lieu thereof $2.34.

ELECTRICAL CONTRACTING INDUSTRY AWARD No. R22 of 1978.

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

The Electrical Contractors' Association of Western Australia (Union of Employers) and Others.

No. 492 of 1996.

Electrical Contracting Industry Award R22 of 1978
No. R22 of 1978.

SENIOR COMMISSIONER G.G. HALLIWELL.

24 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Ms S. Sanderson and Mr M. Creedy on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Electrical Contracting Industry Award R22 of 1978 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. First Schedule—Wages: Delete subclauses (2) and (4) of this Clause and insert in lieu thereof the following:

(2) (a) Classification	Rate Per week $	1st&2nd Safety Net Adjustment Payment $	Total Rate Per Week $
(i) LEVEL 1			
Electronics Tradesperson	549.90	16.00	565.90
(ii) LEVEL 2			
(aa) Electrician—Special Class	491.50	16.00	507.50
(bb) Instrument Fitter/Electrical Grade 2	499.20	16.00	512.20
(iii) LEVEL 3			
(aa) Electrical Installer	467.30	16.00	483.30
(bb) Electrical Fitter	467.30	16.00	483.30

Classification	Safety Net Rate Per week $	1st&2nd Total Adjustment Payment $	Rate Per Week $
(cc) Instrument Fitter/Electrical Grade 1	484.90	16.00	500.90
(dd) Linesperson —Grade 1 (i.e. with not less than 3 years' experience as a Linesperson)	467.30	16.00	483.30
(ee) Cable Jointer	467.30	16.00	483.30
(iv) LEVEL 4			
Linesperson—Grade 2 (i.e. with not less than 3 years' experience as a Linesperson)	449.30	16.00	465.30
(v) LEVEL 5			
Electrical Assistant	394.70	16.00	410.70

(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 as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous Sate 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.

(4) Apprentices:

(a) Wage per week expressed as a percentage of the Electrical Installer's rate per week and Safety Net Adjustment Payment.

Four Year Term	%	Rate Per Week $	1st & 2nd Safety Net Adjustment Payment $	Total Rate Per Week $
First Year	39	182.25	6.24	188.49
Second Year	51	238.32	8.16	246.48
Third year	67	313.09	10.72	323.81
Fourth Year	79	369.17	12.64	381.81
Three and a Half Year Term				
First six Months	39	182.25	6.24	188.49
Next Year	51	238.32	8.16	246.48
Next Year	67	313.09	10.72	323.81
Final Year	79	369.17	12.64	381.81
Three Year Term				
First Year	51	238.32	8.16	246.48
Second Year	67	313.09	10.72	323.81
Third Year	79	369.17	12.64	381.81

(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 as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous Sate 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.

ELECTRICAL CONTRACTING INDUSTRY AWARD No. R22 of 1978.

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

The Electrical Contractors' Association of Western Australia (Union of Employers) and Others.

No. 165 of 1996.

Electrical Contracting Industry Award R22 of 1978
No. R22 of 1978.

SENIOR COMMISSIONER G.G. HALLIWELL.

24 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, Ms S. Sanderson and Mr M. Creedy 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 Electrical Contracting Industry Award R22 of 1978 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 12.—Overtime: Delete paragraph (2)(e) of this Clause and insert in lieu thereof the following:

(e) (i) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he/she will be so required to work overtime shall be supplied with a meal by the employer or be paid $6.95 for such meal and for a second or subsequent meal if so required.

(ii) No such payments shall be made to any employee living in the same locality as his/her place of work who can reasonably return home for such meals.

(iii) If an employee to whom sub paragraph (i) of paragraph (e) of subclause (2) hereof applies has, as a consequence of the notice referred to in that paragraph, provided himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he/she shall be paid for each meal provided and not required, $6.95.

2. Clause 19.—Car Allowance: Delete this Clause and insert in lieu thereof the following:

19.—CAR ALLOWANCE

Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance of 52.58 cents per kilometre travelled. Notwithstanding anything contained in this Clause the employer and the employee may make any other arrangement as to car allowance not less favourable to the employee.

3. Clause 20.—Allowance for Travelling and Employment in Construction Work: Delete paragraph (2)(a) and insert in lieu thereof the following:

(a) On jobs measured by radius from the General Post Office, Perth situated within the area of:

	Per Day $
(i) Up to and including 50 kilometre radius	11.30
OR	
(ii) Over 50 kilometres up to and including 60 kilometres radius	14.50
OR	
(iii) Over 60 kilometres up to and including 75 kilometre radius	22.50
OR	
(iv) Over 75 kilometres up to and including 90 kilometre radius	32.10
OR	
(v) Over 90 kilometres up to and including 105 kilometre radius	41.70

4. Clause 21.—Distant Work:

A. Delete subclause (6) and insert in lieu thereof the following:

(6) An employee to whom the provisions of subclause (1) of this Clause apply shall be paid an allowance of $23.10 for any weekend that he/she returns to his/her home from the job but only if—

(a) He/she advises the employer or his/her agent of his/her intention no later than the Tuesday immediately preceding the weekend in which he/she so returns;

(b) He/she is not required for work during that weekend;

(c) He/she returns to the job on the first working day following the weekend; and

(d) The employer does not provide or offer to provide suitable transport.

B. Delete subclause (9) and insert in lieu thereof the following:

(9) Where an employee, supplied with the board and lodging by his/her employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $10.20 per day provided that where the time actually spent in travelling either to or from the job exceeds twenty minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by he employer.

5. Clause 30.—Special Provisions—State Energy Commission of Western Australia: Delete subclauses (3), (4) and (5) and insert in lieu thereof the following:

(3) (a) An employee to whom Clause 20.—Allowance for Travelling and Employment in Construction Work applies and who is engaged on construction work at Muja shall be paid:

(i) An allowance of $11.30 per day if he/she resides within a radius of fifty kilometres from the Muja Power Station;

(ii) An allowance of $30.60 per day if he/she resides outside that radius;

in lieu of the allowance prescribed in the said Clause.

(b) Where transport to and from the job is supplied by the employer from and to a place mutually agreed upon between the employer and the employee half the above rates shall be paid provided that the conveyance used for such transport is equipped with suitable seating and weather proof covering.

(4) In addition to the allowance payable pursuant to subclause (6) of Clause 21.—Distant Work of this award an employee to whom that Clause applies shall be paid $19.20 on each occasion upon which he/she returns home at the weekend but only if—

(a) He/she has completed three months' continuous service with the employer;

(b) He/she is not required for work during the weekend;

(c) He/she returns to the job on the first working day following the weekend;

(d) The employer does not provide or offer to provide suitable transport;

and such payment shall be deemed to compensate for a periodical return home at the employer's expense.

(5) An employee to whom Clause 21.—Distant Work of this award applies and who proceeds to construction work at Muja from his/her home where located within a radius of fifty kilometres from the General Post Office, Perth—

(a) Shall be paid an amount of $52.00 and for three hours at ordinary rates in lieu of the expenses and payment prescribed in subclause (3) of the said Clause; and

(b) In lieu of the provisions of subclause (4) of the said Clause, shall be paid $52.00 and for three hours at ordinary rates when his/her services terminate if he/she has completed three months continuous service;

and the provisions of subclause (3) and subclause (4) of Clause 21.—Distant Work shall not apply to such an employee.

6. Clause 37.—Structural Efficiency: Delete the preamble in paragraph (e) of subclause (1) and insert in lieu thereof the following:

(e) The parties shall establish an Industry Committee comprising an equal number of nominees of employer organisations which represent employers in the Electrical Contracting Industry and nominees of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch. The Committee shall be jointly chaired by a nominee of either of the Electrical Contractors' Association and of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

7. Fourth Schedule—Named Parties to the Award: Delete this Clause and insert in lieu thereof the following:

FOURTH SCHEDULE—NAMED PARTIES TO THE AWARD

UNION PARTY

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

ELECTRICAL, ENGINEERING AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD 1988.

No. A 17 of 1985.

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 Others

and

West Australian Newspapers Ltd.

No. 515 of 1995.

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award 1988.

COMMISSIONER R.N. GEORGE.

21 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Mr G. Sturman for the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr R. Joyce and with him Ms J. Hadida 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 Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award 1988 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 7 May 1996.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement:

A. Delete the number and title "2A. State Wage Principles—June 1991"

B. Delete the title "Second Schedule—Parties to Order" and insert in lieu thereof the following—

Second Schedule—Named Parties to the Award

2. First Schedule—Wages: Delete subclause (1) and insert in lieu thereof the following—

(1) (a) Classification

		Base Rate	Supplementary Payment	Additional Payment	First Arbitrated Safety Net Adjustment	Total Rate
		$	$	$	$	
C6	Industrial Electronic Tradesperson (with 2 or more years' experience)	456.50	65.00	48.60	8.00	578.10
C6	Industrial Electronic Tradesperson (with less than 2 years' experience)	456.50	65.00	30.30	8.00	559.80
C8	Electrical, Engineering & Building Tradesperson—Carpenter—Tradesperson—Special Class	401.70	57.20	81.60	8.00	548.50
C10	Electrical, Engineering Tradesperson and Building Tradesperson—Multi—Skilled Carpenter (more than 2 years experience with the employer)	365.20	52.00	99.10	8.00	524.30
C10	Electrical, Engineering and Building Tradesperson (with less than 2 years continuous experience with the employer)	365.20	52.00	82.60	8.00	507.80
C12	Tool Storeperson	319.20	45.40	40.30	8.00	412.90
C12/13	Trades Assistant	306.80	42.60	55.50	8.00	412.90

(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. 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.

3. Second Schedule—Parties to Award: Delete this Schedule and insert in lieu thereof the following—

SECOND SCHEDULE—NAMED PARTIES TO THE AWARD

Union Parties

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia—Western Australian Branch

Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Employer Party

West Australian Newspapers Limited

ELECTRICAL TRADES (SECURITY ALARMS INDUSTRY) AWARD, 1980

No. R27 of 1979.

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, Western Australian Branch

and

Wormald Security Controls and Other.

No. 269 of 1995.

Electrical Trades (Security Alarms Industry) Award, 1980 No. R27 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

28 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, Ms S. Sanderson and Mr M. Creedy 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 Electrical Trades (Security Alarms Industry) 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 27.—Supplementary Payments: Delete subclause (1) of this Clause and insert in lieu thereof:

(1) (a) In addition to the rates payable under the provisions of Clause 28.—Wages of this Award, other than this provision, an employee, employed in the classifications listed, shall be paid the supplementary payment prescribed:

Classification	Supplementary Payment Per Week $	1st & 2nd Arbitrated Safety Net Adjustment Payment $	Total Supplementary Per Week $
Group A Serviceperson (Special Class)	51.90	16.00	67.90
Group B Serviceperson	49.40	16.00	65.40
Group C Installer	49.40	16.00	65.40
Group D Trades Assistant	39.30	16.00	55.30

(b) The rates of pay in this award include the first and second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first and 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.

(c) The amount payable to any employee pursuant to the provisions of this subclause—

(i) shall be for all purposes of this award;

(ii) shall be reduced by the amount of any payment being made to that employee in addition to the said rates otherwise than pursuant to the provisions of this subclause, whether such payment is being made by virtue of any order, award or agreement or arrangement.

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
Wormald Security Controls and Other.
No. 269 of 1995.

Electrical Trades (Security Alarms Industry) Award, 1980
No. R27 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

5 June 1996.

Correction Order.

WHEREAS an error occurred in Order No. 269 of 1995 dated 28 May, 1996 (unreported), the following correction is made:

In Clause 27.—Supplementary Payments, replace paragraph (1)(a) with the following:

(1) (a) In addition to the rates payable under the provisions of Clause 28.—Wages of this Award, other than this provision, an employee, employed in the classifications listed, shall be paid the supplementary payment prescribed:

Classification	Supplementary Payment Per Week $	1st & 2nd Arbitrated Safety Net Adjustment Payment $	Total Supplementary Payment Per Week $
Group A Serviceperson (Special Class)	51.90	16.00	67.90
Group B Serviceperson	49.40	16.00	65.40
Group C Installer	49.40	16.00	65.40
Group D Trades Assistant	39.30	16.00	55.30

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

ELECTRONICS INDUSTRY AWARD
No. A22 of 1985.

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, Western Australian Branch
and
A.D. Engineering Pty Ltd and Others.
No. 274 of 1995.

Electronics Industry Award No. A22 of 1985
No. A22 of 1985.

SENIOR COMMISSIONER G.G. HALLIWELL.

28 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, Ms S. Sanderson and Mr S. Foy on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Electronics Industry Award No. A22 of 1985 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 33.—Wages: Delete paragraphs (a) and (b) of subclause (1) of this Clause and insert in lieu thereof the following:

(1) (a) Adults:

	Rate Per Week $	1st & 2nd Arbitrated Safety Net Adjustment Payment $	Total Rate Per Week $
Electronic Technician (Grade III)	537.50	16.00	553.50
Electronic Technician (Grade II)	463.30	16.00	479.30
Electronic Technician (Grade I)	442.20	16.00	458.20
Electronic Serviceperson	418.90	16.00	434.90
Installer	375.90	16.00	391.90
Serviceperson's Assistant	357.90	16.00	373.90
Assembler (1)	352.60	16.00	368.60
Assembler	331.50	16.00	347.50
Trainee Installer (90% of Installer)	338.30	14.40	352.70

(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 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. Clause 10.—Wages—Part II—Construction Work: Delete paragraph (a) of subclause (3) of this Clause and insert in lieu thereof the following:

(3) (a) CLASSIFICATIONS

	Base Rate $	Special Payment $	1st & 2nd Arbitrated Safety Net Adjustment Payment $	Total Rate Per Week $
Electronic Technician (Grade III)	537.50	31.50	16.00	585.00
Electronic Technician (Grade II)	463.30	26.90	16.00	506.20
Electronic Technician (Grade I)	442.20	25.40	16.00	483.60
Electronic Serviceperson	418.90	24.00	16.00	458.90
Installer	375.90	18.10	16.00	410.00
Trainee Installer (90 per cent of Installer's weekly rate)	338.30	16.30	14.40	369.00

(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 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.

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.

No. 20 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (Western Australian Branch)

and

Transfield WA Pty Ltd and Others.

No. 521 of 1996.

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

No. 20 of 1973.

SENIOR COMMISSIONER G.G. HALLIWELL.

4 June 1996.

Order.

HAVING heard Mr W. Tracey on behalf of the applicant and Ms S. Laferla 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 Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 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 19th April 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1. Clause 24.—Allowances and Special Provisions:
   - A. Delete the amounts of 37 cents and 45 cents in subclause (1) of this clause and insert in lieu 38 cents and 46 cents respectively.
   - B. Delete the amounts of 37 cents in subclause (2) of this clause and insert in lieu 38 cents.
   - C. Delete the amounts of 29 cents, 36 cents, 61 cents and 29 cents in paragraph (3)(a) of this clause and insert in lieu 30 cents, 37 cents, 62 cents and 30 cents respectively.
   - D. Delete the amounts of 29 cents, 36 cents, 54 cents, 69 cents and 88 cents in paragraph (3)(b) of this clause and insert in lieu 30 cents, 37 cents, 55 cents, 70 cents and 90 cents respectively.
2. Clause 27.—Wages:
   - A. Delete paragraph (3)(b) and insert in lieu thereof the following:

     (b) Arbitrated Safety Net Payment

     Employees shall be paid an arbitrated safety net payment of $24.00 which shall be added to the base rate specified in subclause (2) hereof for the purpose of calculating the actual weekly rate.

     The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 adjustments.
   - B. Delete the amount of $15.90 in subclause (5) Industry Allowance of this clause and insert in lieu $16.20.:
3. Fourth (4th) Schedule—Special Site Provisions Respectively:
   - A. Delete the amount of 76 cents in Part 1—Metropolitan Sites and insert in lieu 77 cents.
   - B. Delete the amount of $1.37 in Part 2—Resource Development Project Sites, 2 North West Shelf Gas Project, subclause (5) and insert in lieu $1.39.
   - C. Delete the amount of $2.94 in Part 2—Resource Development Project Sites, 2 North West Shelf Gas Project, subclause (6) and insert in lieu $2.99.
   - D. Delete the amount of $123.80 in Part 2—Resource Development Project Sites, 2 North West Shelf Gas Project, paragraph (14)(a) and insert in lieu $126.03.
   - E. Delete the amount of $2.30 in Part 2—Resource Development Project Sites, 2 North West Shelf Gas Project, paragraphs (14)(h) and (i) and insert in lieu $2.34.

ENGINEERING AND ENGINE DRIVERS' (NICKEL SMELTING) AWARD, 1973
No. 4 of 1973.

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, Western Australian Branch

and

Western Mining Corporation Limited and Others.

No. 296 of 1996.

Engineering and Engine Drivers' (Nickel Smelting) Award, 1973
No. 4 of 1973.

SENIOR COMMISSIONER G.G. HALLIWELL.

10 June 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch), Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Ms G. Kristinopolos 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 Engineering and Engine Drivers' (Nickel Smelting) Award, 1973, 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 29th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 26.—Rates of Pay and Classification Definitions: Delete subclause (4) of this clause and insert in lieu thereof the following:

(4) (a) The minimum rates of wages payable to employees covered by this award shall be as follows:

Engineering Employee Group:

Wage Group	Classification Title	Minimum Training Requirements	Rate Per Week	1st & 2nd Arbitrated Safety Net Adjustment	Total Rate Per Week
EE G1	Engineering Employee Grade 1	In-house Training	309.80	16.00	325.80
EE G2	Engineering Employee Grade 2	Production/ Engineering Certificate I	323.50	16.00	339.50
EE G3	Engineering Employee Grade 3	Production/ Engineering Certificate II	343.60	16.00	359.60
EE G4	Engineering Employee Grade 4	Trade Certificate	363.60	16.00	379.60
EE G5	Engineering Employee Grade 5	Completion of 33% Qualification for EE G7	384.30	16.00	400.30
EE G6	Engineering Employee Grade 6	Completion of 66% Qualification for EE G7	397.80	16.00	413.80
EE G7	Engineering Employee Grade 7	Post Trade Certificate or Formal Equivalent	410.70	16.00	426.70
Plant Control **Group**					
PC G1	Plant Controller Grade 1	In-house Training	313.40	16.00	329.40
PC G2	Plant Controller Grade 2	Production/ Engineering Certificate I	333.50	16.00	349.50
PC G3	Plant Controller Grade 3	Production/ Engineering Certificate II	343.20	16.00	359.20
PC G4	Plant Controller Grade 4	Trade Certificate	363.20	16.00	379.20
PC G5	Plant Controller Grade 5	Completion of 33% of Qualification for PC G7	377.20	16.00	393.20
PC G6	Plant Controller Grade 6	Completion of 67% of Qualification for PC G7	390.70	16.00	406.70
PC G7	Plant Controller Grade 7	Post Trade Certificate or Formal Equivalent	403.70	16.00	419.70

(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 1st 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.

ENGINEERING TRADES (GOVERNMENT) AWARD, 1967
Nos. 29, 30 and 31 of 1961 and 3 of 1962.

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, Western Australian Branch

and

The Minister for Works and Others.

No. 163 of 1996.

Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962
No. 29/1961, 30/1961, 31/1961 & 3/1962.

SENIOR COMMISSIONER G.G. HALLIWELL.

10 June 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr S. Majeks 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 Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962, 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 29th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 14.—Overtime:

A. Delete paragraph (e) subclause (3) of this clause and insert in lieu thereof:

(e) Subject to the provisions of paragraph (f) of this subclause, an employee required to work overtime for more than one hour shall be supplied with a meal by the employer or be paid $6.55 for a meal, if, owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each such meal by the employer or be paid $4.60 for each meal so required.

B. Delete paragraph (h) subclause (3) of this clause and insert in lieu thereof:

(h) An employee required to work continuously from 12 midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. the same day shall be paid $3.05 for breakfast.

2. Clause 19.—Fares and Travelling Allowances: Delete paragraph (a), (b) and (c) of subclause (1) of this clause and insert in lieu thereof the following:

(a) On places within a radius of fifty kilometres from the General Post Office, Perth—$11.55 per day.

(b) For each additional kilometre to a radius of sixty kilometres from the General Post Office, Perth—60 cents per kilometre.

(c) Subject to the provisions of paragraph (d) work performed at places beyond a sixty kilometre radius from the General Post Office, Perth shall be deemed to be distant work unless the employer and the employees with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause in which case an additional allowance of 60 cents per kilometre shall be paid for each kilometre in excess of the sixty kilometre radius.

3. Clause 20.—Distant Work—Construction : Delete subclauses (6) and (7) and insert in lieu thereof the following:

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $23.80 and for any weekend that he/she returns to his home from the job but only if—

(a) The employer or his/her agent is advised of the intention no later than the Tuesday immediately preceding the weekend in which the employee so returns;

(b) He/she is not required for work during that weekend;

(c) The employee returns to the job on the first working day following the weekend; and

(d) The employer does not provide or offer to provide suitable transport.

(7) Where an employee supplied with board and lodging by the employer, is required to live more than eight hundred metres from the job, he/she shall be provided with suitable transport to and from that job or be paid an allowance of $10.40 per day provided that where the time actually spent in travelling either to or from the job exceeds twenty minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

GARDENERS (GOVERNMENT) 1986 AWARD
No. A16 of 1983.

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. Premier of Western Australia and Others.

No. 342 of 1996.

Gardeners (Government) 1986 Award
No. 16 of 1983.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Ms L. Halligan on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle (refer to Exhibits 1 and 2);

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Gardeners (Government) 1986 Award No. 16 of 1983 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 16th day of June, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 25.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

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

PART A—ALL EMPLOYEES EXCEPT THOSE EMPLOYED BY THE MINISTRY OF EDUCATION

	Base Rate	Arbitrated Safety Net Adjustments 1, 2 and 3	Minimum Award Wage
	$	$	$
(a) Level One			
Comprehends the following classes of work			
Gardener/Ground Attendant (Grade 2) Labourer (Maintenance and General) Mower Operator (Walk Mower)			
1st year of employment	372.70	24.00	396.70
2nd year of employment	376.50	24.00	400.50
3rd year of employment and thereafter	380.60	24.00	404.60
Level Two			
Comprehends the following classes of work			
Assistant on Rubbish Vehicle Gardener/Grounds Attendant (Grade 1)			
1st year of employment	377.30	24.00	401.30
2nd year of employment	381.30	24.00	405.30
3rd year of employment and thereafter	385.10	24.00	409.10

	Base Rate	Arbitrated Safety Net Adjustments 1, 2 and 3	Minimum Award Wage
	$	$	$
Level Three			
Comprehends the following classes of work			
Concrete Finisher, Slab and Kerb Layer Machinery Operators —Rotary Hoe (not attached to tractor) —Tractor Pneumatic Tyred Class 1 (without power-operated attachments) Maintenance Attendant Power-operated Portable Saw			
1st year of employment	388.10	24.00	412.10
2nd year of employment	391.90	24.00	415.90
3rd year of employment and thereafter	395.80	24.00	419.80
Level Four			
Comprehends the following classes of work			
Assistant Mechanical Maintenance Attendant Machinery Operators —Power Roller —Tractor (Pneumatic Tyred) (with power-operated attachments Classes 1-5) —Tractor (Pneumatic Tyred) (without power-operated attachments Classes 2-5) Motor Vehicle Driver (less than 1.2 tonnes) Mower Operator —Rider Mower —Walk Mower (In Charge of vehicle) Grades 1 and 2) Senior Gardener/Ground Attendant Senior Maintenance Attendant			
1st year of employment	399.60	24.00	423.60
2nd year of employment	403.70	24.00	427.70
3rd year of employment and thereafter	407.30	24.00	431.30
Level Five			
Comprehends the following classes of work			
(i) Machinery Operator - Tractor (Pneumatic Tyred with power-operated attachments Class 6 and up to 230 hp) Motor Vehicle Driver (over 1.2 tonnes and below 3 tonnes) Tractor Mower Operator			
1st year of employment	402.20	24.00	426.20
2nd year of employment	406.00	24.00	430.00
3rd year of employment and thereafter	409.50	24.00	433.50
(ii) Motor Vehicle Driver (over 3 tonnes and less than 6 tonnes) Rider Mower (In charge of Vehicle)			
1st year of employment	406.90	24.00	430.90
2nd year of employment	410.80	24.00	434.80
3rd year of employment and thereafter	414.40	24.00	438.40
Level Six			
Comprehends the following classes of work			
Tradesperson Gardener			
1st year of employment	417.80	24.00	441.80
2nd year of employment	423.00	24.00	447.00
3rd year of employment and thereafter	427.20	24.00	451.20
Level Seven			
Comprehends the following classes of work			
Horticulturist (Certificated) Senior Mower Operator (BMA)			
1st year of employment	436.40	24.00	460.40
2nd year of employment	440.50	24.00	464.50
3rd year of employment and thereafter	444.50	24.00	468.50
Level Eight			
Comprehends the following classes of work			
Foreperson Grade 2			
1st year of employment	466.90	24.00	490.90
2nd year of employment	472.00	24.00	496.00
3rd year of employment and thereafter	476.50	24.00	500.50
Level Nine			
Comprehends the following classes of work			
Estate Foreperson (Homeswest) Foreperson Grade 1			
1st year of employment	495.70	24.00	519.70
2nd year of employment	500.80	24.00	524.80
3rd year of employment and thereafter	505.30	24.00	529.30

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

PART B—ALL EMPLOYEES EMPLOYED BY THE MINISTRY OF EDUCATION

	Base Rate	Arbitrated Safety Net Adjustments 1, 2 and 3	Minimum Award Wage
	$	$	$
(c) Level One			
Nil			
Level Two			
Assistant Gardener/Handyperson			
1st year of employment	380.30	24.00	404.30
2nd year of employment	383.60	24.00	407.60
3rd year of employment and thereafter	386.70	24.00	410.70
Level Three			
Gardener/Handyperson Gardener/Pool Maintenance Officer			
1st year of employment	387.10	24.00	411.10
2nd year of employment	391.10	24.00	415.10
3rd year of employment and thereafter	395.30	24.00	419.30
Level Four			
Gardener/Ride on Mower Operator Handyperson			
1st year of employment	396.40	24.00	420.40
2nd year of employment	400.00	24.00	424.00
3rd year of employment and thereafter	404.20	24.00	428.20
Level Five			
Senior Gardener/Handyperson Senior Gardener/Pool Maintenance Officer Handyperson (Belmont SHS)			
1st year of employment	408.40	24.00	432.40
2nd year of employment	412.20	24.00	436.20
3rd year of employment and thereafter	416.00	24.00	440.00
Level Six			
Horticulturist (Certificated)			
1st year of employment	439.40	24.00	463.40
2nd year of employment	444.70	24.00	468.70
3rd year of employment and thereafter	449.10	24.00	473.10

(d) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

GOVERNMENT WATER SUPPLY, SEWERAGE AND DRAINAGE EMPLOYEES AWARD 1981
No. 2 of 1980.

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

Water Authority of Western Australia and Others.

No. 208 of 1996.

COMMISSIONER C.B. PARKS.

10 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Mr K. Provost 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 Government Water Supply, Sewerage and Drainage Employees Award 1981 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 May 1996.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

1. Clause 5.—Classification Structure and Definitions: Delete the last paragraph of this clause and insert in lieu thereof—

"Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, (Miscellaneous Workers Division); 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, Western Australian Branch; or the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers.

2. Clause 14.—Travelling Time and Allowances: Delete paragraph (a) of subclause (3) of this clause and insert in lieu thereof—

(a) For travelling daily to and from the job within a radius of 50 kilometres of the G.P.O. Perth—an allowance of $11.45 per day.

3. Clause 17.—Tea Breaks, Meal Hours, Refreshments: Delete paragraph (a) of subclause (6) of this clause and insert in lieu thereof—

(a) An employee required to work overtime for more than 1.5 hours without being notified on the previous day or earlier that he/she will be so required to work shall either be supplied with a meal by the employer or paid $7.20 but payment need not be made to employees residing in the locality of the work who can reasonably return home for meals.

4. Clause 26.—Distant Work—Construction: Delete subclauses (6) and (7) of this clause and insert in lieu thereof—

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $24.00 and for any weekend he/she returns home from the job but only if—

(a) the employer or his/her agent is advised of the intention not later than the Tuesday immediately preceding the weekend in which the employee so returns;

(b) he/she is not required for work during that weekend;

(c) the employee returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(7) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job, he/she shall be provided with suitable transport to and from that job or be paid an allowance of $10.47 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

5. Schedule A—Parties to the Award: Delete this clause and insert in lieu thereof—

SCHEDULE A—PARTIES TO THE AWARD

Unions Party to the Award

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

Australian Liquor, Hospitality and Miscellaneous Workers Union, (Miscellaneous Workers Division)

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Employers Party to the Award

Water Authority of Western Australia

GRAIN HANDLING MAINTENANCE WORKERS AWARD
No. C477 of 1979.

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

Co-Operative Bulk Handling Limited.

No. 612 of 1996.

Grain Handling Maintenance Workers Award
No. C477 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

24 May 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicants, and Mr S. Sandy 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 Grain Handling Maintenance Workers 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 9th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 27.—Wages: Delete subclause (1) of this Clause and insert in lieu thereof:

(1) (a) The rate of wages payable weekly to adult employees covered by this Award shall be as follows:

Classification	Relativity %	Wage Rate $	First and Second Arbitrated Safety Net Adjustment $	Total Rate $
Tradesperson Level 4	115.0	524.40	16.00	540.40
Tradesperson Level 3	110.0	501.60	16.00	517.60
Tradesperson Level 2	105.0	478.80	16.00	494.80
Tradesperson Level 1	100.0	456.00	16.00	472.00
Maintenance Employee Level 4	92.4	421.40	16.00	437.40
Maintenance Employee Level 3	88.0	401.30	16.00	417.30
Maintenance Employee Level 2	84.0	383.00	16.00	399.00
Maintenance Employee Level 1	79.2	361.20	16.00	377.20
Driver Articulated Vehicle exceeding 20 tonne capacity	98.44	448.90	16.00	464.90
Driver Motor Vehicle exceeding 7 tonne capacity	94.76	432.10	16.00	448.10

(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 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 I—Named Parties to Award: Delete this Schedule and replace with the following—

NAMED PARTIES TO THE AWARD

Unions Party

Automotive, Food Metals, Engineering, Printing and Kindred Industries Union of Workers—
Western Australian Branch
1111 Hay Street
WEST PERTH WA 6005

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, W.A. Branch
401-403 Oxford Street
MOUNT HAWTHORN WA 6016

Operative Painters' and Decorators' Union of Australia, W.A. Branch, Union of Workers
Third Floor,
Labor Centre,
82 Beaufort Street,
PERTH WA 6000

Transport Workers' Union of Australia, Industrial Union of Workers, W.A. Branch,
Second Floor,
Labor Centre,
82 Beaufort Street,
PERTH WA 6000

Company Party

Co-operative Bulk Handling Limited
22 Delhi Street
WEST PERTH WA 6005

HOSPITAL EMPLOYEES' (PERTH DENTAL HOSPITAL) AWARD 1971
No. 4 of 1970.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Perth Dental Hospital

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. 267 of 1996.

COMMISSIONER C.B. PARKS.

22 May 1996.

Order.

HAVING heard Ms T. Tansley on behalf of the Applicant and Mr D. Kelly 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 Hospital Employees' (Perth Dental Hospital) Award 1971 be varied in accordance with the following Schedule and that such variation shall have effect on and from 1 March 1996.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

Clause 19.—Wages: Delete subclause (2) of this clause and insert in lieu thereof—

(2) Where an employee is designated to be Technician in Charge of one of the following dental laboratories,

Orthodontic Laboratory Clinic
North Perth Clinic
Liddell Clinic
Gustafsen Clinic
Sir Charles Gairdner Hospital Clinic
Bunbury Clinic
Albany Clinic
Warwick Dental Clinic
Rockingham Dental Clinic
Mount Henry Dental Clinic

that employee shall be paid at the rate of $16.05 per week in addition to the ordinary rate of wage prescribed by this clause.

LAUNDRY WORKERS' AWARD 1981
No. A29 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Alsco Linen Service Pty Ltd and Others.

No. 358 of 1996.

Laundry Workers' Award 1981.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Ms J. Dowling on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General

Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle;

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Laundry Workers' Award, 1981 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W. S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 7.—Wages: Delete the preamble and subclause (1) of this clause and insert in lieu thereof the following—

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

(1) (a) Adult Employees

	Relativity to Tradesperson	Base Rate	1, 2 & 3 Arbitrated Safety Net Adjustments	Minimum Rate
	%	$	$	$
Laundry Employee				
Grade 1	80	333.75	24.00	357.75
Grade 2	85	354.60	24.00	378.60
Grade 3	91	379.65	24.00	403.65
Grade 4	95	396.35	24.00	420.35

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

LIFT INDUSTRY (ELECTRICAL AND METAL TRADES) AWARD 1973
No. 9 of 1973.

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
Kone Elevators (Aust) Pty Limited & Others.

No. 167 of 1996.

Lift Industry (Electrical and Metal Trades) Award 1973 No. 9 of 1973.

SENIOR COMMISSIONER G.G. HALLIWELL.

24 May 1996.

Order.

HAVING heard Mr C. Young 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 G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr A. Carpenter 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 Lift Industry (Electrical and Metal Trades) Award 1973 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 12.—Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $6.65 for a meal and if, owing to the amount of overtime worked, a second or subsequent meal is required, the employee shall be supplied with each such meal by the employer or be paid $4.50 for each meal so required.

2. Clause 17.—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 the 1st day of July and end on the 30th day of 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)		
Rates per Kilometre (Cents)	Over 2600cc	1600cc -2600cc	1600cc & Under
Metropolitan Area	54.7	49.0	42.6
South West Land Division	56.0	50.2	43.6
North of 23.5° South Latitude	61.6	55.4	48.2
Rest of the State	57.9	51.9	45.1
Motor Cycle (in all areas)	18.8¢ per kilometre		

3. Clause 18.—Fares and Travelling Time: Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) An employee to whom subclause (1) of this clause does not apply and who is engaged on construction work or regular repair service and/or maintenance work shall be paid an allowance in accordance with

the provisions of this subclause to compensate for excess fares and travelling time from the employee's home to his/her place of work and return:

(a) On places within a radius of 50 kilometres from the General Post Office, Perth—$11.30 per day.

(b) For each additional kilometre to a radius of 60 kilometres from the General Post Office, Perth—60 cents per kilometre.

(c) Subject to the provisions of paragraph (d), work performed at places beyond a 60 kilometre radius from the General Post Office, Perth shall be deemed to be distant work unless the employer and the employees, with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause, in which case an additional allowance of 60 cents per kilometre shall be paid for each kilometre in excess of the 60 kilometre radius.

(d) In respect to work carried out from an employer's depot situated more than 60 kilometres from the G.P.O., Perth, the main Post Office in the town in which such depot is situated shall be the centre for the purpose of calculating the allowance to be paid.

(e) Where transport to and from the job is provided by the employer from and to his/her depot or such other place more convenient to the employee as is mutually agreed upon between the employer and employee, half the above rates shall be paid; provided that the conveyance used for such transport is provided with suitable seating and weatherproof covering.

4. Clause 19.—Distant Work: Delete subclauses (6) and (7) of this Clause and insert in lieu thereof the following:

(6) An employee, to whom the provisions of subclause (1) of this clause apply, shall be paid an allowance of $23.10 for any week-end he/she returns home from the job, but only if—

(a) the employee advises the employer or the employer's agent of such intention not later than the Tuesday immediately preceding the week-end in which the employee so returns;

(b) the employee is not required for work during that week-end;

(c) the employee returns to the job on the first working day following the week-end; and

(d) the employer does not provide, or offer to provide, suitable transport.

(7) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job, the employee shall be provided with suitable transport to and from that job or be paid an allowance of $10.20 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

5. FOURTH SCHEDULE—NAMED PARTIES TO THE AWARD: Delete this Clause and insert in lieu thereof the following:

FOURTH SCHEDULE—NAMED PARTIES TO THE AWARD

Unions Parties

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

METAL TRADES (GENERAL) AWARD 1966.
No. 13 of 1965.

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

Anodisers W.A. and Others

No. 298 of 1996.

Metal Trades (General) Award 1966 No. 13 of 1965.

No. 13 of 1965.

SENIOR COMMISSIONER G.G. HALLIWELL.

4 June 1996.

Order.

HAVING heard Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Mr J. Fiala on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch and Mr M. Borlase 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 Metal Trades (General) Award 1966 No. 13 of 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 15th May 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

PART 1—GENERAL

1. Clause 13.—Hours:

A. Delete the provisions of paragraph (b) of subclause (1) of this clause and insert in lieu thereof the following:

(b) Subject to the provisions of subclauses (3) and (4) of this clause the ordinary hours of the work shall be an average of 38 per week to be worked on one of the following bases.

(i) 38 hours within a work cycle not exceeding seven consecutive days; or

(ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or

(iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or

(iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or

(v) where the ordinary hours being worked each day are in accordance with paragraph (e)(ii) of this subclause, any other work cycle during which a weekly average of 38 ordinary hours are worked; or

(vi) for the purposes of paragraph (g) of subclause (3) of this clause any other work cycle during which a weekly average of 38 ordinary hours are worked as may be agreed in accordance with paragraph (g) of subclause (3).

B. Delete the provisions of paragraph (e) of subclause (1) of this clause and insert in lieu thereof the following:

(e) The ordinary hours of work prescribed herein shall not exceed 10 any day. Provided that—

(i) in any arrangement of ordinary working 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, section or sections concerned; and

(ii) by arrangement between the employer and the majority of employees in the plant, section or sections concerned, ordinary hours, not exceeding 12 on any day, may be worked subject to—

(aa) the employer and the employees concerned being guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 Hour Shifts (as exhibited in the Western Australian Industrial Relations Commission on 11 April 1990);

(bb) proper health monitoring procedures being introduced;

(cc) suitable roster arrangements being made; and

(dd) proper supervision being provided.

(iii) Subject to the provisions of subparagraphs (i) and (ii) hereof, 12 hour shifts may be worked provided the employer has given the relevant union or unions concerned notice in writing that such shifts are to be worked.

2. Clause 15.—Shiftwork: Delete the provisions of paragraph (a) of subclause (3) of this clause and insert in lieu thereof the following:

(3) (a) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

Provided that where the ordinary hours of work normally worked in an establishment are worked on less than five days then the provision of paragraph (a) shall be as if that number of consecutive shifts were substituted for five consecutive shifts.

3. Clause 22.—Location Allowance: Delete subclause (5) of this clause and insert in lieu thereof the following:—

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices and trainees receiving less than the adult rate and employees employed for less than a full week, shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

4. Clause 31.—Wages and Supplementary Payments:

A. Delete paragraphs (a) and (b) of subclause (1) of this clause and insert in lieu thereof the following:

(a) Wage Group	Base Per Week	Supplementary Payment	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	Total Rate Per Week
	$	$	$	$
Level C14	284.80	40.60	24.00	349.40
Level C13	299.50	42.60	24.00	366.10
Level C12	319.20	45.40	24.00	388.60
Level C11	337.40	48.10	24.00	409.50
Level C10	365.20	52.00	24.00	441.20
Level C 9	383.50	54.60	24.00	462.10
Level C 8	401.70	57.20	24.00	482.90
Level C 7	420.00	59.80	24.00	503.80
Level C 6	456.50	65.00	24.00	545.50
Level C 5	474.80	67.60	24.00	566.40
(b) Wage Group				
Automotive Electrical Fitter	365.20	52.00	24.00	441.20
Motor Mechanic	365.20	52.00	24.00	441.20
Motor Cycle Mechanic	365.20	52.00	24.00	441.20

B. Delete paragraph (d) of subclause (1) of this clause and insert in lieu thereof the following:

(d) The rates of pay in this award include the three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Case Decision, the December 1994 State Wage Decision and the March 1996 State Wage Case Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 adjustments.

C. Delete the provisions of paragraph (e) of subclause (9) of this clause and insert in lieu thereof the following:

(e) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission if the initiative varies an Award provision and by agreement of the parties involved shall be subject to the following requirements—

(i) the changes shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission;

(ii) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;

(iii) no employee shall lose income as a result of the change;

(iv) the relevant union or unions must be a party to the agreement;

(v) the relevant union or unions shall not unreasonably oppose any agreement;

(vi) any agreement shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this Award or a Section 41 Industrial Agreement and take precedence over any provision of this Award to the extent of the inconsistency.

5. APPENDIX 3.—ABB POWER TRANSMISSION PTY LTD

Clause 3.—Wages: Delete paragraph (a) of this clause and insert in lieu thereof the following:

(a) The minimum total wage payable weekly to adult employees classified herein shall be as follows:

(a) Wage Group	Base Per Week	Supplementary Payment	1st, 2nd & 3rd Arbitrated Safety Net Adjustiment	Total Rate Per Week
	$	$	$	$
Adult Employees:				
Wage Group C10	365.20	52.00	24.00	441.20
Coil Winder 1st Class				
Transformer Assembler 1st Class				
Wage Group C11	337.40	48.10	24.00	409.50
Coil Winder 2nd Class				
Transformer Assembler 2nd Class				
Transformer Protective Coating 1st Class				
Insulation Processor 1st Class				
Wage Group C12	319.20	45.40	24.00	388.60
Coil Winder 3rd & 4th Class				
Insulation Processor 2nd Class				
Transformer Protective Coating 2nd Class				
Transformer Assembler 3rd Class				
Transformer Tanker 1st Class				
Wage Group C13	299.50	42.60	24.00	366.10
Coil Builder 1st Class				
Insulation Processor 3rd Class				
Transformer Assembler 4th Class				
Transformer Tanker 2nd Class				

6. PART II—CONSTRUCTION

Clause 10.—Wages: Delete paragraph (a) in subclause (1) of this clause and insert in lieu thereof the following:

(2) (a)

Classification	Base Per Week	Special Payment	1st, 2nd & 3rd Arbitrated Safety Net Adjustiment	Total Rate Per Week
	$	$	$	$
(i) Instrumentation and Controls Tradesperson	423.80	96.00	24.00	543.80
(ii) Instrument Tradesperson—Complex Systems	386.60	84.90	24.00	495.50
(iii) Instrument Tradesperson	380.10	80.10	24.00	484.20
(iv) Scientific Instrument Maker	380.10	80.10	24.00	484.20
(v) Welder—Special Class	371.40	80.10	24.00	475.50
(vi) Welder	362.90	80.10	24.00	467.00
(vii) Electrician—Special Class	386.60	84.90	24.00	495.50
(viii) Electrical Fitter	362.90	80.10	24.00	467.00
(ix) Electrical Installer	362.90	80.10	24.00	467.00
(x) Boilermaker	362.90	80.10	24.00	467.00
(xi) Tradesperson the greater part of whose time is occupied in marking off and/or template making	367.10	80.10	24.00	471.20
(xii) Mechanical Tradesperson—Special Class	386.60	84.90	24.00	495.50
(xiii) Tradesperson	362.90	80.10	24.00	467.00
(xiv) Pipe Fitter	362.90	80.10	24.00	467.00
(xv) Fitter—Refrigeration	362.90	80.10	24.00	467.00
(xvi) Fitter—Window Frame	362.90	80.10	24.00	467.00
(xvii) Motor Mechanic	362.90	80.10	24.00	467.00
(xviii) Machinist—Engineering: First Class	362.90	80.10	24.00	467.00
Second Class	327.20	66.80	24.00	418.00
(xix) Certificated Rigger or Scaffolder	345.70	68.90	24.00	438.60
(xx) Rigger or Scaffolder—Other	334.70	67.70	24.00	426.40
(xxi) Tool and Material Storesperson	322.90	65.80	24.00	412.70
(xxii) Tradesperson's Assistant	310.20	64.30	24.00	398.50
(xxiii) Tradesperson's Assistant—who from time to time uses a grinding machine	311.70	65.80	24.00	401.50
(xxiv) Lagger—first 6 months' experience	310.20	63.40	24.00	397.60
2nd and 3rd six months' experience	311.70	65.40	24.00	401.10
4th and 5th six months' experience	315.90	65.60	24.00	405.50
thereafter	317.40	66.60	24.00	408.00
(xxv) Grinder using portable machine	315.90	65.70	24.00	405.60
(xxvi) Crane Attendant and Dogman	334.70	67.70	24.00	426.40
(xxvii) Labourer	291.60	62.10	24.00	377.70

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. 1005B of 1995.

COMMISSIONER C.B. PARKS.

13 May 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

BEFORE the Commission are counter proposals by the Shell Oil Company of Australia and Australian Petroleum Pty Ltd for the first named, and Ampol Petroleum Ltd an associate company of the second named, to be deleted from Schedule A—Respondents, of the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award (the Award). These counter proposals arise out of matters previously commenced before the Commission by the Australian Workers' Union, (West Australian Branch) Industrial Union of Workers (the Union).

The Commission has been told from the bar table that the companies seeking the deletion no longer employ persons in the classifications, nor are they engaged in the industry, described in the Award and therefore they are not governed by it. This situation, it was said, is unlikely to change in the future. The position, in relation to Ampol Petroleum Ltd is addressed in a letter to the Commission, from Australian Petroleum Pty Ltd, dated 29 November 1995. The Commission has also been told from the bar table that Australian Petroleum Pty Ltd currently employs persons in a service station trading as "Solo Morley", and will do so for a short time in the future.

In essence the argument for the deletion of the Company names is that firstly, they do not employ persons in classifications, nor do that engage in the industry, governed by the Award and therefore their names should be removed therefrom as they have no interest in the Award, do not wish to appear to have any interest in the Award, and because to remain named would cause them to be notified of whatever action of any kind is commenced in future in relation to the Award. Secondly, the appearance of the company names in the list of respondents contributes nothing to the operation of the Award as it does not rely upon them in anyway to establish the nature

of the industry covered by the Award. Clause 3.—Scope of the Award, it is said, fully describes the nature and extent of the industry encompassed and therefore governed by the Award. Finally, it is contended that the State Wage Case Principles require that parties to awards update and rationalise them and makes express reference to that being done in relation to a respondency list and that is obviously appropriate on this occasion because the continued naming of the companies serves no useful purpose.

The agent for Australian Petroleum Pty Ltd signified a willingness for that company to be now named in the list of respondents, provided the Commission granted the company leave to apply to amend the award in future to delete its name from the list when, as anticipated, it ceases operations that are governed by the Award.

The Union accepts that the companies seeking to be deleted do not employ, and are not likely to employ in the future, persons covered by the Award. However, the Union objects to the deletions but put no cogent argument to the Commission in an attempt to counter the several aspects of the companies' arguments.

Clause 3.—Scope of the Award is expressed in the following terms—

"

3.—SCOPE

(1) This award shall apply to employees employed in any of the callings classified in Clause 21.—Wages hereof, whose duties, without limiting their generality, shall include any one or more of those described in subclause (2) of this clause and who are employed by any of the respondents hereto who are engaged in the business of motor service station operators and/or buying, selling or exchanging of new or secondhand motor vehicles and/or application of anticorrosive and/or paint protective substances and/or washing and polishing of motor vehicles.

(2) The duties referred to in subclause (1) hereof are as follows—

(a) The retail selling of petrol or oil.

(b) The washing, cleaning, polishing, greasing or changing of oil of motor vehicles, wheel changing, lamp globe changing, servicing of motor vehicles (where no mechanical knowledge is required) or tidying up of the employer's premises.

(c) Car parking in and around the employer's premises.

(d) Operating a steam cleaning machine or applying anticorrosive and/or paint protective substances to motor vehicles."

I concur with the analysis of the Scope clause proffered on behalf of the companies. The clause is self speaking. Subclause (1) fully describes the nature and function of the business types which are declared to fall within the scope of the Award and are therefore governed by it. Therein it is also declared that the Award governs employees classified elsewhere within it whose duties also include those described in subclause (2), however none of that contributes or detracts in any way from the industry description. Thus, were the Commission to delete the names of Shell Oil Company of Australia and Ampol Petroleum Ltd from the Award, such would have no practical effect upon the continued scope of operation of the Award. Were either of these companies to operate a future a business of the type described in the Scope clause they would, by dint of operation of that clause, and s.37 of the Industrial Relations Act, 1979, be bound by the terms of the Award if, at the time, they have not become alternatively regulated.

Neither of the two companies are presently governed by the award and therefore it serves no good purpose for them to remain named therein. In addition the Commission in Court Session, has by way of pronouncement in the State Wage Case Principles, made it clear that awards ought be reviewed and rationalised and express reference has been made to updating lists of respondents so that they are relevant to the operation of their respective awards.

I am satisfied that the Commission should make the deletions claimed. In addition, the Commission will insert the name of Australian Petroleum Pty Ltd and such be cited as trading as Solo, Morley, being satisfied that to do so will not alter the scope of the Award. The term of this award has long expired and therefore an application may be made at any future time to amend the provisions thereof, without leave of the Commission. An order will therefore issue to give effect to these reasons.

Appearances: Mr M. Lourey appeared on behalf of the applicant.

Mr A. Cameron appeared on behalf of the Shell Oil Company of Australia.

Ms C. Brown appeared on behalf of Australian Petroleum Pty Ltd.

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. 1005B of 1995.

COMMISSIONER C.B. PARKS.

7 June 1996.

Order.

HAVING heard Mr M. Lourey on behalf of the Applicant and Mr A. Cameron on behalf of the Shell Oil Company of Australia and Ms C. Brown on behalf of the Australian Petroleum Pty Ltd, 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 on and from the date of this Order.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

Schedule A.—Respondents:

A. Delete from this schedule the titles "Shell Oil Company of Australia" and "Ampol Petroleum Ltd".

B. Insert in this schedule the title and description "Australian Petroleum Pty Ltd (trading as Solo, Morley)" immediately following the title and description "Ampol South Perth (Trona Pty Ltd as trustee for the K C Greenwell Family Trust No. 2 trading as)".

NURSES (ABORIGINAL MEDICAL SERVICES) AWARD.

No. A 23 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation, Industrial Union of Workers Perth

and

Broome Regional Aboriginal Medical Service Aboriginal Corporation and Others.

No. 185 of 1996.

Nurses' (Aboriginal Medical Services) Award No. A 23 of 1987.

COMMISSIONER A.R. BEECH.

31 May 1996.

Order.

HAVING heard Mr B. George on behalf of the Applicant and Ms M. Marchese 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 Nurses' (Aboriginal Medical Services) Award No. A 23 of 1987 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 27th day of May 1996.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

———

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu the following:

2.—ARRANGEMENT

1. Title
1A Statement of Principles December 1994
2. Arrangement
3. Area and Scope
4. Term
5. Definitions
6. Contract of Employment
7. Hours of Duty, Overtime and On Call
8. Relieving
9. Annual Leave and Holidays
10. Long Service Leave
11. Sick Leave
12. Compassionate Leave
13. Parental Leave
14. Study Leave and Orientation
15. Transport
16. Transfers and Distant Appointments
17. Accommodation
18. Part Time Employees and Casuals
19. Laundry and Uniforms
20. Payment of Wages
21. Time and Wages Records
22. Interviews and Notices
23. No Reduction
24. District Allowance
25. Nursing Outpost—Availability Allowance and Special Leave
26. Wages
27. Leave to Attend Union Business
28. Deduction of Union Subscriptions
29. Trade Union Training Leave
30. Liberty to Apply
31. Grievance Procedure
32. Leave Without Pay
33. Compaction of Leave
34. Enterprise Agreements
35. Shift and Weekend Work
36. Calculation of Penalties
List of Respondents

2. Clause 5.—Definitions: Delete this clause and insert in lieu the following:

5.—DEFINITIONS

(1) "Accrued Day(s) Off" means the paid days off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed by Clause 7.—Hours of Duty, Overtime and On Call.

(2) "The Federation and/or Union" means The Australian Nursing Federation, Industrial Union of Workers Perth.

(3) "Nurse" means a person who is registered or entitled to be registered in Western Australia in Division 1 of the register referred to in section 33 of the Nurses Act 1992 (WA).

(4) "Sole Capacity", for the purposes of Clause 26.—Wages, shall mean that there is only one registered nurse, employed, available and/or actually working in the setting.

(5) "Urban Setting" shall mean any locality not referred to as a nursing outpost.

3. Clause 10.—Long Service Leave: Delete this clause and insert in lieu the following:

10.—LONG SERVICE LEAVE

The long service leave provisions contained in the Nurses' (ANF—WA Public Sector) Award 1994 or any award made in substitution thereof shall apply to employees bound by this award.

4. Clause 13.—Maternity Leave: Delete this clause and insert in lieu the following:

13.—PARENTAL LEAVE

Subject to the terms of this clause officers are entitled to maternity, paternity and adoption leave and to work part time in connection with the birth or adoption of a child.

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) For the purposes of this Part:

(a) "Employee" includes a part time employee but does not include an employee engaged upon casual or seasonal work.

(b) "Paternity Leave" means leave of the type provided for in Part B—Paternity Leave of this clause whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this Part;

(ii) any period of part time employment worked in accordance with this Part; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of the certificate required by subclause (4) of this Part, be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to subclauses (6) and (9) of this Part the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) of this Part the employee must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) of this Part.

(b) 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) of this Part.

(c) The employer, by not less than 14 days' notice in writing to the employee, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

(d) An employee shall not be in breach of this Part as a consequence of failure to give the stipulated period of notice in accordance with paragraph (b) of this subclause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(6) Transfer to a Safe Job

Where, in the opinion of a registered 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 registered medical practitioner.

Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this Part.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (3) of this Part:

(i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

(b) The period of maternity 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.

(8) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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

(9) Special Maternity 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 registered 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 to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 the period to which the employee is entitled under subclause (3) of this Part.

(c) For the purposes of subclauses (10), (11) and (12) of this Part, 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 (6) of this Part, to the position she held immediately before such transfer.

Where such position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (3) of this Part, 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 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.

(11) Effect of Maternity Leave on Employment

Subject to this Part, 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 any relevant award or agreement.

(12) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave provided that 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.

(13) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to 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 returning to work after maternity leave or the expiration of the notice required by paragraph (a) of this subclause, 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 (6) of this Part, to the position which she held immediately before such transfer or, in relation to an employee who has worked part time during the pregnancy, the position she held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(14) 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 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 Part, 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) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions:

For the purposes of this Part:

(a) "Employee" includes part time employees but does not include an employee engaged upon casual or seasonal work.

(b) "Maternity leave" means leave of the type provided for in Part A—Maternity Leave of this clause (and includes special maternity leave) whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee or the employee's spouse under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(f) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this Part;

(ii) any period of part time employment worked in accordance with this Part; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Paternity Leave

(a) A male employee, upon production to his employer of the certificate required by subclause (4) of this Part, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) an unbroken period of up to one week at the time of the confinement of his spouse;

(ii) a further unbroken period of up to 51 weeks in order to be the primary care giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

(b) The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) of this Part the employee must produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place;

(b) in relation to any period to be taken under paragraph (3)(b) of this Part, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) of this Part.

(b) The employee shall not be in breach of paragraph (a) of this subclause as a consequence of failure to give the notice required if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (4) of this Part.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (3) of this Part:

(i) the period of paternity leave provided by subparagraph (3)(a)(ii) of this Part may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of leave may be further lengthened by agreement between the employer and the employee.

(b) The period of paternity leave taken under subparagraph (3)(a)(ii) of this Part 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.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (3)(a)(ii) of this Part but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (3) of this Part, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is 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 his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity 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 any relevant award or agreement.

(10) Termination of Employment

(a) An employee on paternity leave may terminate his 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 his absence on paternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (3)(a)(ii) of this Part.

(b) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation

to an employee who has worked part time under this Part, to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(12) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(b) Before an employer engages a replacement employee 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 his rights under this Part, 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) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

PART C—ADOPTION LEAVE

(1) Nature of Leave

Adoption leave is unpaid leave.

(2) Definitions:

For the purposes of this Part:

(a) "Employee" includes a part time employees but does not include an employee engaged upon casual or seasonal work.

(b) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

(c) "Relative adoption" occurs when a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(d) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(e) "Spouse" includes a de facto spouse.

(f) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this Part;

(ii) any period of part time employment worked in accordance with this Part; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Adoption Leave

An employee shall, upon production to the employer of the documentation required by subclause (4) of this Part, be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(a) an unbroken period of up to three weeks at the time of the placement of the child.

(b) an unbroken period of up to 52 weeks from the time of this placement in order to be the primary care giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:

(i) any period of leave taken pursuant to paragraph (a) of this subclause.

(ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(4) Certification

(a) Before taking adoption leave the employee must produce to the employer:

(i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(b) In relation to any period to be taken under paragraph (3)(b) of this Part, a statutory declaration stating:

(i) the employee is seeking adoption leave to become the primary care giver of the child;

(ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(5) Notice Requirements

(a) Upon receiving notice of approval for adoption purposes an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

(b) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

(c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (3)(a) of this Part.

(d) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (3)(b) of this Part, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(e) An employee shall not be in breach of this subclause as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (5)(c) and (d) of this Part if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(6) Variation of Period of Adoption Leave

(a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (3) of this Part:

(i) the period of leave taken by paragraph (3)(b) of this Part may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) the period of leave may be further lengthened by agreement between the employer and the employee.

(b) The period of adoption leave taken under paragraph (3)(b) of this Part 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.

(7) Cancellation of Adoption Leave

(a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

(b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(8) Special Leave

The employer shall grant to any employee who is seeking to adopt a child such unpaid leave not exceeding two days as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(9) Adoption Leave and Other Entitlements

(a) Provided the aggregate of leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under subclause (3) of this Part, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is 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 the employee's absence on adoption leave.

(10) Effect of Adoption Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on adoption 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 any relevant award or agreement.

(11) Termination of Employment

(a) An employee on adoption leave may terminate his or 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 the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(12) Return to Work After Adoption Leave

(a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (3)(b) of this Part.

(b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or, in relation to an employee who has worked part time under this Part, to the position held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(13) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(b) Before an employer engages a replacement employee 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 his or her rights under this Part, 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) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

PART D—PART TIME WORK

(1) Definitions

For the purposes of this Part:

(a) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

(b) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

(c) "Spouse" includes a de facto spouse.

(d) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part time employment under this Part whichever first occurs or, if such a position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

(e) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this Part;

(ii) any period of part time employment worked in accordance with this Part; or

(iii) any period of leave or absence authorised by the employer or by the award.

(2) Entitlement

With the agreement of the employer:

(a) A male employee may work part time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(b) A female employee may work part time in one or more periods while she is pregnant where part time employment is, because of the pregnancy, necessary or desirable.

(c) A female employee may work part time in one or more periods at any time from the seventh week after the date of the birth of the child until its second birthday.

(d) In relation to adoption a female employee may work part time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(3) Return to Former Position

(a) An employee who has had at least 12 months' continuous service with an employer immediately before commencing part time employment after the birth or placement of a child has, at the expiration of the period of such part time employment or the first period if there is more than one, the right to return to his or her former position.

(b) Nothing in paragraph (a) of this subclause shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part time employment.

(4) Effect of Part Time Employment on Continuous Service

Commencement on part time work under this Part, and return from part time work to full time work under this Part, shall not break the continuity of service or employment.

(5) Pro Rata Entitlements

Subject to the provisions of this Part and the matters agreed to in accordance with subclause (8) of this Part, part time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(6) Transitional Arrangements—Annual Leave

(a) An employee working part time under this Part shall be paid for and take any leave accrued in respect of a period of full time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full time in the class of work the employee was

performing as a full time employee immediately before commencing part time work under this Part.

(b) (i) A full time employee shall be paid for and take any annual leave accrued in respect of a period of part time employment under this Part in such periods and manner as specified in this award, as if the employee were working part time in the class of work the employee was performing as a part time employee immediately before resuming full time work.

(ii) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full time rate.

(7) Transitional Arrangements—Sick Leave

An employee working part time under this Part shall have sick leave entitlements which have accrued under this award (including any entitlement accrued in respect of previous full time employment) converted into hours. When this entitlement is used, whether as a part time employee or as a full time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(8) Part Time Work Agreement

(a) Before commencing a period of part time employment under this Part the employee and the employer shall agree:

(i) that the employee may work part time;

(ii) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(iii) upon the classification applying to the work to be performed; and

(iv) upon the period of part time employment.

(b) The terms of this agreement may be varied by consent.

(c) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

(d) The terms of this agreement shall apply to the part time employment.

(9) Termination of Employment

(a) The employment of a part time employee under this Part may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Part or has enjoyed or proposes to enjoy any benefits arising under this Part.

(b) Any termination entitlements payable to an employee whose employment is terminated while working part time under this Part, or while working full time after transferring from part time work under this Part, shall be calculated by reference to the full time rate of pay at the time of termination entitlement based on the period of full time employment and all service as a part time employee on a pro rata basis.

(10) Extension of Hours of Work

An employer may request, but not require, an employee working part time under this Part to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (8) of this Part.

(11) The work to be performed part time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(12) Inconsistent and Provisions

An employee may work part time under this Part notwithstanding any other provisions of this award which limits or restricts the circumstances in which part time employment may be worked or the terms upon which it may be worked including provisions:

(a) limiting the number of employees who may work part time;

(b) establishing quotas as to the ratio of part time to full time employees;

(c) prescribing a minimum or maximum number of hours a part time employee may work; or

(d) requiring consultation with, consent of, or monitoring by a union;

and such provisions do not apply to part time work under this Part.

(13) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee working part time under this Part.

(b) A replacement employee may be employed part time. Subject to this subclause, subclauses (5), (6), (7), (8), (9) and (12) of this Part apply to the part time employment of replacement employees.

(c) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (1)(e) of this Part.

(e) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

5. Clause 15.—Transport: Delete this clause and insert in lieu the following:

15.—TRANSPORT

(1) No employee shall be required to provide and maintain a vehicle for the purposes of the employer's business, however, if the employer requests and the employee agrees to use her/his vehicle for the purposes of the employer's business an allowance shall be paid in accordance with the rates prescribed in the Motor Vehicle Allowance clause of the Nurses' (ANF—WA public Sector) Award 1994 as varied from time to time.

(2) The employer shall ensure that paid facilities are available to an employee to connect with public transport when proceeding on annual and special leave under this award.

6. Clause 16.—Tran sfers and Distant Appointments: Delete paragraph (3)(d) of this clause.

7. Clause 19.—Laundry and Uniforms: Delete this clause and insert in lieu the following:

19.—LAUNDRY AND UNIFORMS

(1) 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 pay an allowance of $4.70 per week, and the employee shall wear uniforms which conform to the uniform stipulated by the employer with respect to material, colour, pattern and conditions.

(2) Each employee shall be entitled to all reasonable laundry work at the expense of the employer, but where the employer elects not to launder the uniforms the employee shall be paid an allowance of $1.60 per week.

8. Clause 24.—District Allowance: Delete this clause and insert in lieu the following:

24.—DISTRICT ALLOWANCE

(1) Employees employed in the districts of the State described in subclause (2) of this clause shall be paid the allowance prescribed for that district.

(2) The boundaries of the districts shall be:

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 south-east to Mount Gibson and Burracoppin; thence to a point south-east at the junction of latitude 32 and longitude 119; thence south along longitude 119 to the 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 District (1).

(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 District (2).

(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 at 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) (a) The annual allowance payable fortnightly to employees employed in the districts of the State described in subclause (2) of this clause are as follows:

District	Without Dependents $	With Dependents $
(1)	Nil	Nil
(2)	489	978
(3)	683	1366
(4)	1082	2164
(5)	2149	4298
(6)	2627	5254

Provided that the allowances prescribed shall operate from the beginning of the first pay period commencing on or after 27 May 1996.

(b) Nurses employed in the following localities shall be paid the following allowances in lieu of the rates prescribed in paragraph (3)(a) of this clause.

District	Town	Without Dependents $	With Deptendents $
1	Nil	Nil	Nil
2	Kalgoorlie	151.50	303.00
	Ravensthorpe	612.60	1225.20
	Norseman	612.60	1225.20
	Salmon Gums	612.60	1225.20
	Marvel Loch	612.60	1225.20
	Esperance	612.60	1225.20
3	Meekatharra	1020.99	2041.98
	Mount Magnet	1020.99	2041.98
	Wiluna	1020.99	2041.98
	Laverton	1020.99	2041.98
	Leonora	1020.99	2041.98
	Cue	1020.99	2041.98
4	Carnarvon	968.30	1936.60
5	Fitzroy Crossing	2740.21	5480.42
	Halls Creek	2740.21	5480.42
	Turner River Camp	2740.21	5480.42
	Nullagine	2740.21	5480.42
	Abydos Research Station	2542.60	5085.20
	Liveringa (Camballin)	2542.60	5085.20
	Marble Bar	2542.60	5085.20
	Wittenoom	2542.60	5085.20
	Port Hedland	2233.01	4460.02
6	Nil	Nil	Nil

(4) Nurses employed in nursing outposts shall be paid the following rate in lieu of paragraph (3)(a) of this clause.

Without Dependents $	With Dependents $
2911	5822

(5) The rates of allowance prescribed herein shall be adjusted every twelve months in accordance with variations in the consumer price index for Perth for the period ending December 31st each year. The adjustment to the rates shall be effective from the beginning of the first pay period to commence on or after the 1st day of January in each year.

(6) Where an employee is on annual leave, payment of the district allowance shall be made for such period of leave at the rate the employee would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than special and annual leave) payment of the district allowance shall only be made for the period of such leave that the employee remains in the district in which he or she is employed.

(8) Liberty is reserved to the union to make application to amend this clause with respect to localities which attract allowances different from that applying generally to that district.

(9) Nothing in this clause shall operate so as to reduce the district allowance being paid at the date of this order to any employee.

9. Clause 25.—Nursing Outpost—Availability Allowance: Delete this clause and insert in lieu the following:

25.—NURSING OUTPOST—AVAILABILITY ALLOWANCE AND SPECIAL LEAVE

(1) A nurse employed in any location listed in subclause (5) of this clause shall be paid a 25% salary loading in lieu of overtime and on call.

(2) Where more than one nurse is employed and available then the loading shall be equally distributed but not less than 10%.

(3) A nurse employed in any location listed in subclause (5) of this clause shall accrue and be entitled to take one week of special leave for each 12 weeks of continuous employment.

(4) Special leave shall be taken in a locality of the employee's choice to which the employer shall pay fares up to the values prescribed in paragraphs (4)(a) and (4)(b) of Clause 9.—Annual Leave and Holidays.

(5) For the purposes of this clause nursing outposts shall include but not be limited to:

Balgo Hills
Beagle Bay
Bililuna
Blackstone/Papulankutja
Bremer Bay
Burringurrah
Cervantes
Coonana
Cosmo Newberry
Cundeelee
Gibb River
Giles/Warakurna
Jameson/Mantamaru
Jigalong
Kalumburu
Kiwirrkurra
Kunawarritji
Kurrawong
La Grange
Lake Varley
Lombardina
Looma
Mingenew
Mowanjum
Mt Margaret
Mulan/Lake Gregory
Ninga Mia
Nookanbah
Nullagine
One Arm Point
Oombulgurri
Parnngurr
Patjarr/Karilywara
Punmu
Shark Bay
Tambellup
Tjirrkarli
Tjukurla
Tjuntjuntjarra
Wanarn
Wangkatjunka
Warburton
Warman/Turkey Creek
Warralong
Wiluna
Wingellina/Irrunytju
Yandeyarra

(6) The inclusion and deletion of nursing outposts is at the discretion of the employer and may be varied from time to time by agreement with the Federation.

(7) Where it can be demonstrated that the amount of overtime and on call performed is disproportionate in relation to the payment of the availability allowance and additional leave, then the parties may, by agreement, vary the allowance by either increasing or decreasing the allowance.

10. Clause 26.—Wages: Delete this clause and insert in lieu the following:

26.—WAGES

(1)

Classification	Base Rate Per Week $	1st and 2nd Arbitrated Safety Net Adjustment $	Total Rate $
Registered Nurse Level 2			
Year 1	663.80	16.00	679.80
Year 2	675.88	16.00	691.88
Year 3	691.58	16.00	707.58
Year 4	724.60	16.00	740.60
Registered Nurse Level 3			
Year 1	742.20	16.00	758.20
Year 2	758.70	16.00	774.70
Year 3	776.30	16.00	792.30
Years 4	794.70	16.00	810.70
Registered Nurse Level 3A	820.50	16.00	836.50
Registered Nurse Level 4			
Year 1	884.25	16.00	900.25
Year 2	953.00	16.00	969.00
Year 3	1021.70	16.00	1037.70

(2) A registered nurse shall, in the case of a nurse working in an urban setting, be classified and paid within the range of a Registered Nurse Level 2 pursuant to subclause (1) of this clause.

(3) A registered nurse shall:

(a) in the case of a nurse working in other than an urban setting; or

(b) in the case of a nurse working in a sole capacity in an urban setting; or

(c) in the case of a nurse who is supervising one or more nurses classified at Registered Nurse Level 2 in an urban setting;

be classified and paid within the range of Registered Nurse Level 3, pursuant to subclause (1) of this clause.

(4) A registered nurse shall, in the case of a nurse working in a nursing outpost, be classified and paid as a Registered Nurse Level 3A pursuant to subclause (1) of this clause, except where that nurse is designated by the employer as a "Senior Nurse" and an additional allowance of 4.5% shall be paid.

(5) A registered Nurse co-ordinator and/or educator shall be classified and paid as a Registered Nurse Level 4 pursuant to subclause (1) of this clause.

(6) Progression beyond the commencing level will be dependent upon the attainment of additional qualifications relevant to the position held and/or servie in such position provided that advancement by service only shall be limited to one level for each year of service to a maximum of two beyond the commencing level and subject to satisfactory performance.

(7) Employees who have had recent, relevant experience, in community nursing shall have such experience recognised by the employer when determining the rate of wage payable under subclause (1) of this clause. The onus of proof of previous experience shall rest on the employee and any calculation arising from the production of work records or other documentary evidence shall only apply from the time such proof is supplied.

(8) No current employee covered by this award shall suffer any reduction in wages as a result of the May 1996 amendments to this award.

(9) 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.

(10) 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.

11. List of Respondents: Delete this list and insert in lieu the following:

LIST OF RESPONDENTS

Bega Garnbirringu Health Services Aboriginal Corporation, PO Box 1665, KALGOORLIE WA 6430

Broome Regional Aboriginal Medical Service Aboriginal Corporation, P.O. Box 867, BROOME WA 6725

Carnarvon Medical Service Aboriginal Corporation, PO Box 278, CARNARVON WA 6701

East Kimberley Aboriginal Medical Service Aboriginal Corporation, P.O. Box 622, KUNUNURRA WA 6743

Geraldton Aboriginal Medical Service Aboriginal Corporation, PO Box 1689, GERALDTON WA 6531

Mawarnkarra Health Service Aboriginal Corporation, PO Box 59, ROEBOURNE WA 6718

Ngaanyatjarra Health Service Aboriginal Corporation, PO Box 644, ALICE SPRINGS NT 0871

Nganggunawili Medical Service Aboriginal Corporation, PMB, WILUNA WA 6646

Perth Aboriginal Medical Service Aboriginal Corporation, 154 Edward Street, EAST PERTH WA 6004

Puntukuru Aboriginal Medical Service Aboriginal Corporation, Jigalong Clinic, via NEWMAN WA 6753

Yura Yungi Medical Service Aboriginal Corporation, PMB 10, HALLS CREEK WA 6770

PAINT AND VARNISH MAKERS' AWARD
No. 22 of 1957.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Dulux Australia Ltd.

No. 365 of 1996.

Paint and Varnish Makers' Award No. 22 of 1957.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle;

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Paint and Varnish Makers' Award No. 22 of 1957 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and

that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 22.—Rates of Pay: Delete subclause (1) of this clause and insert in lieu thereof the following—

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

	Base Rate	1, 2 & 3 Arbitrated Safety Net Adjustments	Minimum Rate
	$	$	$
Adult Employees			
Bulk Paint Tinting—			
First three months training and experience	396.90	24.00	420.90
After three months training and experience	404.90	24.00	428.90
Varnish Making—			
First three months training and experience	396.90	24.00	420.90
After three months training and experience	404.90	24.00	428.90
Paint Mixing and/or Operator of Wet Grinding Machine of any kind—			
First three months training and experience	381.80	24.00	405.80
After three months training and experience	389.90	24.00	413.90
Caustic Plant—			
First three months training and experience	381.80	24.00	405.80
After three months training and experience	389.90	24.00	413.90
All Others—			
First three months training and experience	371.20	24.00	395.20
After three months training and experience	379.30	24.00	403.30

2. Clause 22.—Rates of Pay: Delete subclause (4) of this clause and insert in lieu thereof the following—

(4) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

PASTRYCOOKS' AWARD
No. 24 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch
and
Bakewell Pies (1978) Pty Ltd and Others.
No. 367 of 1996.

Pastrycooks' Award
No. 24 of 1981.

COMMISSIONER R.H. GIFFORD.
4 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr M. Beros 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 Pastrycooks' 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 30th day of May 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

1. Clause 10.—Wages.

A. Delete subclause (1)(a) of this clause and insert in lieu thereof the following:

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

Classification	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustments 1, 2 and 3	Award Rate
	$	$	$	$
Adults:				
Single Hand Pastrycook	371.10	34.10	24.00	429.20
Pastrycook	365.20	37.80	24.00	427.00
Cake Decorator	359.40	-	24.00	383.40
Assistant	329.60	-	24.00	353.60

B. Delete subclauses (1)(b)(i) and (ii) and insert in lieu thereof the following:

(b) (i) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

C. Renumber existing subclauses (1)(b)(iii), (iv) and (v) to (1)(b)(ii), (iii) and (iv).

PHOTOGRAPHIC INDUSTRY AWARD, 1980
No. A9 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Illustrations Pty Ltd and Others.

No. 368 of 1996.

Photographic Industry Award, 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Ms J. Dowling on behalf of the Respondents, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle;

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Photographic Industry Award, 1980 be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Clause 12.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

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

	Base Rate	1, 2 & 3 Arbitrated Safety Net Adjustments	Minimum Rate
	$	$	$
SECTION A PORTRAIT ADVERTISING AND COMMERCIAL STUDIOS:			
(a) Photographer	348.50	24.00	372.50
(b) All others—First three months	325.30	24.00	349.30
(c) All others—Thereafter	338.30	24.00	362.30
SECTION B DEVELOPING, PRINTING AND FINISHING ESTABLISHMENTS:			
(a) Colour filter determinator Custom colour enlargement printer Colour printer controller	356.50	24.00	380.50
(b) Rack and tank colour film processor machine operator Colour enlargement printer Colour quality corrector Kit mixing operator Colour printer operator	348.50	24.00	372.50
(c) Rack and tank black and white film processor Black and white enlargement printer Black and white printer operator	341.10	24.00	365.10
(d) All others—First three months	325.30	24.00	349.30
(e) All others—Thereafter	338.30	24.00	362.30

SECTION C

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

RADIO AND TELEVISION EMPLOYEES' AWARD.
No. R 3 of 1980.

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, Western Australian Branch

and

Hill Industries Ltd and Others.

No. 272 of 1995.

Radio and Television Employees' Award.

No. R3 of 1980.

SENIOR COMMISSIONER G.G. HALLIWELL.

28 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, and Mr S. Foy 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 Radio and Television Employees' 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 7th May 1996.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

Schedule.

1. Clause 29.—Wages: Delete paragraphs (a) and (b) of subclause (1) of this Clause and insert in lieu thereof the following:

(a) Adults:

	Rate Per Week $	1st & 2nd Arbitrated Safety Net Adjustment Payment $	Total Rate Per Week $
Radio-Television Serviceperson (Grade 1)	448.20	16.00	464.20
Radio-Television Serviceperson	418.90	16.00	434.90
Car Radio Installer	353.30	16.00	369.30
Antenna and/or Television Installer	353.30	16.00	369.30
Assembler	340.60	16.00	356.60

(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 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.

SECURITY OFFICERS AND CLEANERS (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD, 1992.

No. A 11 of 1991.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

West Australian Newspapers Ltd.

No. 380 of 1996.

Security Officers and Cleaners (West Australian Newspapers Limited) Award 1992.

COMMISSIONER R.N. GEORGE.

21 May 1996.

Order.

HAVING heard Mr N. Ellery on behalf of the Applicant and Mr R. Joyce 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 Security Officers and Cleaners (West Australian Newspapers Limited) Award 1992 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 7 May 1996.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

Schedule.

1. Clause 11.—Wages: Delete subclause (1) from this clause and insert in lieu thereof the following—

(1) (a) The base rate and supplementary payment payable under this award shall be as follows:

		Total Rate $
A	Security Officers	
	Grade 5 (Trainee)	357.80
	Grade 4	400.50
	Grade 3	441.20
	Grade 2	462.10
	Grade 1	491.30
B	Cleaners	
	Grade 3	387.00
	Grade 2	399.50
	Grade 1	441.20

(b) (i) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

(ii) "Overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus" or any term whatsoever), which an employee would receive in excess of the "award wage". Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

2. Clause 28.—Superannuation: Delete this clause and insert in lieu thereof the following—

28.—SUPERANNUATION

(1) Parties

The provisions of this clause shall apply to persons employed pursuant to this award.

(2) Employer Contributions

(a) Subject to the Trust Deed, Rules and Annexure 'M' of the West Australian Newspapers Retirement Fund, the employer shall make contributions to the said fund in respect of employees referred to in subclause (1) who are fund members.

(b) The employer shall be under no obligation to make contributions for any period the employee is absent from work without pay.

(c) Abovementioned contributions shall be the equivalent of six (6) percent of an employee's 'ordinary weekly earnings' (as defined herein) and shall be paid to the West Australian Newspapers Retirement Fund.

(d) 'Ordinary weekly earnings' shall mean the rate of pay to which the employee is entitled under Clause 11.—Wages, of this award and shall include any regular overaward payment, personal margin and permanent shift loading.

(e) 'Ordinary weekly earnings' will exclude any other payment, allowance, special rate, penalty and/or overtime.

(3) Qualifying Period

New employees who join the fund shall not be eligible for employer contributions (as defined in subclause (2)) until they have completed four weeks' continuous fulltime employment.

Upon completion of this qualifying period of employment, the employer's contribution on behalf of each eligible employee shall be retrospective to the date upon which the employee joined the company.

(4) Fund

Employer contributions will be paid into the West Australian Newspapers Retirement Fund which complies with the guidelines established by the interim Occupational Superannuation Commissioner.

THE SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS) STATE AWARD 1977.

No. R 32 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive And Allied Employees' Association of Western Australia

and

Myer Stores Limited and Others.

No. 479 of 1996.

The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.

No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

28 May 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Ms C. Brown 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 Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, 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 23rd day of May 1996.

(Sgd.) R. H. GIFFORD,

[L.S.] Commissioner.

Schedule.

Clause 28.—Wages, part I. Delete subclause (1) of this Part of this clause and insert in lieu thereof the following:

(1) With effect from the beginning of the first pay period commencing on or after 23 May 1996.

ADULTS (Classifications and Wages per week):

	(i) Who works ordinary hours Monday to Friday	(ii) Who works ordinary hours between Monday and 1.00 pm Saturday	(iii) Who works ordinary hours between Monday and Saturday with the completion of ordinary hours after 1.00 pm Saturday
	$	$	$
Shop Assistants, Sales Person, Wholesale Sales Person, Demonstrator, Canvasser and/or Collector, Storeperson, Packer, Despatch Hand, Reserve Stock Hand, Ticket Writer			
Award Rate	409.00	421.30	434.30
Window Dresser/ Visual Merchandiser			
Award Rate	415.90	428.20	441.20
Storeperson Operator Grade I			
Award Rate	420.20	432.50	445.60
Storeperson Operator Grade II			
Award Rate	425.00	437.30	450.40

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

THE SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS) STATE AWARD 1977

No. R32 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Myer Stores Limited and Others.

No. 234 of 1996.

COMMISSIONER R. H. GIFFORD.

10 May 1996.

Statement.

THE COMMISSIONER : By this application The Shop, Distributive and Allied Employees' Association of Western Australia (SDA) seek the inclusion of a new Clause 24 entitled "Supported Wages Employees", into the Shop & Warehouse (Wholesale & Retail Establishments) State Award No. R32 of 1976, to replace in full the clause known as "Under-Rate Workers".

Its inclusion is consented to by the respondent employers.

The new clause provides for a process of determining appropriate 'supported wage rates', constituting a percentage of the award rate, for persons with disabilities, sufficient to enable them to meet the impairment criteria for the receipt of a Disability Support Pension of the Commonwealth Government.

The process requires a documented assessment to be made of the disabled employee's productive capacity by either the employer and the union, in consultation with the employee or by the employer and an accredited assessor. The assessment is to be lodged with the Registrar of the Commission. It is then to be the subject of an annual review by the parties concerned.

The clause represents the formulation of a model clause arising out of consultation between the Australian Council of Trade Unions (ACTU), The Australian Chamber of Commerce and Industry and The Commonwealth Department of Health and Family Services.

This model clause was approved by a Full Bench of the Australian Industrial Relations Commission (O'Conner P., McIntyre V.P. & Gay C.) by decision of 10 October 1994, with respect to 4 Awards, including the Retail and Wholesale Shop Employees (Australian Capital Territory) Award 1983 (Print J.5408).

In that decision the Full Bench, in observing (at p.3) that the clause was consistent with its wage fixing principles, that it contained appropriate safeguards to ensure that the wages paid were equitable and that employees with disabilities were not exploited, then indicated that:

> "The Commission is conscious of the fact that the consent application before it are an historic initiative which has attracted unanimous support from all the parties involved, and has been the result of extensive consultative processes. The model clause is, as the parties submitted, facilitative only; i.e. it will not be sufficient in itself to promote greater employment opportunities for people with disabilities. The clause, to be effective, requires a commitment by the industrial parties to make use of the award provisions. We confidently expect that this commitment will be forthcoming and that the model clause will be implemented in workplaces to assist those people with disabilities who may have previously found it difficult or impossible to compete for jobs in the open labour market. We hope that other awards of the Commission will be varied to include the model clause and that the parties to those awards will implement its provisions. The Commission congratulates the parties on their co-operation and considerable efforts in developing the "Supported Wage System" which, we hope will encourage industry to employ workers with disabilities and assist the integration of disabled workers into the general workforce".

This Commission is pleased to endorse these sentiments and similarly congratulates the parties to this award for their efforts in pursing the inclusion of the clause in the award,

representing as it does, an important initiative. It is to be hoped that the inclusion of this clause in the award will materially assist in enabling disabled persons to obtain employment suitable to their particular circumstances.

Evidence was led in the proceedings from a Project Officer of the Supported Wage Unit of the Department of Health and Family Services, who told the Commission that since the model clause had been included in awards of the Australian Commission and of other State Commissions, some 500 disabled persons had been placed in employment under the terms of that clause. On the basis of this Officer's experience in Western Australia, potential demand for placement in employment under such a clause was evident from 25 persons, including a number in the retail and wholesale sector capable of being covered by the instant award.

The Commission notes this as a most satisfying prospect which could arise from the approval of this application.

The Commission considers the clause to be in conformity with the Commission's Statement of Principles—March 1996, and intends to issue an Order varying the Award to give effect to the new replacement clause.

Appearances: Mr W. Johnston appeared on behalf of the applicant.

Mr C. Keys appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Myer Stores Limited and Others.

No. 234 of 1996.

The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

10 May 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Mr C. Keys 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 Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 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 23rd day of April 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

1. Clause 2.—Arrangement. Delete the number and title "24. Under-Rate Workers" and insert in lieu thereof the following:

24. Supported Wages Employees

2. Clause 24.—Under-Rate Workers. Delete this Clause and insert in lieu thereof the following:

24.—SUPPORTED WAGES EMPLOYEES

(1) This Clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Award. In the context of this clause, the following definitions will apply:

(a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full Award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".

(b) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

(c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

(d) "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

Employees covered by this Clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(The Clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their current employment.)

The Award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Award for the class of work which the person is performing according to the following schedule:

Assessed Capacity (Subclause (4))	% of Prescribed Award Rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than $45.00 per week.)

* Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

(4) Assessment of Capacity

For the purpose of establishing the percentage of the Award rate to be paid to an employee under this Award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

(a) the employer and the union, in consultation with the employee or, if desired, by any of these; and

(b) the employer and an accredited assessor from a panel agreed by the parties to the Award and the employee.

(5) Lodgement of Assessment Instrument

(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the Award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.

(b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(7) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this Award paid on a pro-rata basis.

(8) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(9) Trial Period

(a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

(b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(c) The minimum amount payable to the employee during the trial period shall be no less than $45.00 per week.

(d) Work trials should include induction or training as appropriate to the job being trialed.

(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (4) above.

SOAP AND ALLIED PRODUCTS MANUFACTURING AWARD No. 25 of 1960.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Candle Light Co Pty Ltd.

No. 382 of 1996.

Soap and Allied Products Manufacturing Award.

CHIEF COMMISSIONER W.S. COLEMAN.

5 June 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent, and by consent, and being satisfied that the application accords with the 'Statement of Principles—March 1996' pursuant to the General Order in Matter No. 1164 of 1995 (*76 WAIG 911*) whereby at least 12 months has elapsed since the Second Arbitrated Safety Net Adjustment was implemented and being informed of the programme established by the parties for the review of the Award under the Structural Efficiency Principle;

THEN the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Soap and Allied Products Manufacturing Award be varied for the Third Arbitrated Safety Net Adjustment in accordance with the following Schedule and that such variation shall have effect on and from the first pay period commencing on or after the 21st day of May, 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

Schedule.

1. Clause 25.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

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

	Base Rate	1, 2 & 3 Arbitrated Safety Net Adjustments	Minimum Rate
	$	$	$
Adult employees: Product maker—soap crutcher, liquids powders and pastes, detergents and cleaners polishes and stains, toilet soaps	343.60	24.00	367.60
Assistant Product Maker	335.60	24.00	359.60
General Hand other than above	327.50	24.00	351.50

2. Clause 25.—Wages: Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

SUGAR REFINING AWARD
No. A41 of 1982.

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, Western Australian Branch

and

CSR Limited and Others.

No. 594 of 1995.

The Sugar Refining Award
No. A41 of 1982.

SENIOR COMMISSIONER G.G. HALLIWELL.

28 May 1996.

Order.

HAVING heard Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, and having been advised by letter by Mr H.A.T. Segerius on behalf of CSR Limited, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Sugar Refining 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 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1. Clause 7.—Wages and Allowances: Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) Adults: The weekly wage rates for adult employees covered by this Award shall be—

		Rate Per Week	First Arbitrated Adjustment Safety Net Payment	Total Rate Per Week
(a)	Production Employees (AWU) —	$		
	Shift Employees			
	Shift Operator Grade 1	430.50	8.00	438.50
	Shift Operator Grade 2	414.30	8.00	422.30
	Day Employees			
	Leading Hand Grade 1	421.30	8.00	429.30
	Leading Hand Grade 2	414.30	8.00	422.30
	Operator Grade 1	414.30	8.00	422.30
	Operator Grade 2	403.20	8.00	411.20
	Operator Grade 3	389.20	8.00	397.20
(b)	Boiler Attendants and Greasers (CMEU)			
	Boiler Attendant (attending two or more boilers)	421.30	8.00	429.30
	Greaser and Hot Water Attendant	403.20	8.00	411.20
(c)	Tradespersons and Others (CEPU)			
	Electrician—Special Class	496.30	8.00	504.30
	Fitter—Tradesperson	468.40	8.00	476.40
	Electrical Fitter—Tradesperson	468.40	8.00	476.40
	Welder—First Class	468.40	8.00	476.40
	Rigger—Licensed	422.80	8.00	430.80
	Tradesperson's Assistant	391.10	8.00	399.10

(d) These rates in paragraphs (a), (b) and (c) recognise all disabilities associated with the work of metal trades employees, except those in subclause (7) hereof.

(e) Safety Net Adjustment payments set out in this clause represent a payment which shall be absorbed into overaward payments.

An "overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee would receive in excess of the "award wage" which applied immediately prior to the decision of the Western Australian Industrial Relations Commission dated 24 December 1993 (Application No. 1457 of 1993) for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

The Safety Net Payment is an adjustment reflecting the application of the arbitrated safety net adjustment principle enunciated in the State Wage Decision of 24 December 1993.

Consistent with the requirements of that principle the $8.00 safety net adjustment is absorbable to the extent of any equivalent amount in rates of pay—whether overaward, award or industrial agreement—in excess of the minimum rates (classification rate and supplementary payment) prescribed in accordance with the September 1989 State Wage Case decision.

UNIVERSITY, COLLEGES AND SWANLEIGH AWARD, 1980
No. R 7B 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

St Thomas More College and Others.

No. 390 of 1996.

University, Colleges and Swanleigh Award, 1980
No. R 7B of 1979.

COMMISSIONER A.R. BEECH.

10 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Mr D. Jones 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 University, Colleges and Swanleigh 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 6th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 31.—Wages: Delete paragraphs (1)(a), (b) and (c) of this clause and insert in lieu the following:

(1) (a) The minimum weekly rates of wage payable from the beginning of the first pay period commencing on or after the 6th day of June 1996 shall be:

	Minimum Award Rate $
Level 1	
Cleaner	388.60

	Minimum Award Rate $
Level 2	
Domestic employees including— Kitchen Attendant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	395.30
Level 3	
Cooks (Other)	399.50
Level 4	
Gardener/Groundsperson Grade 1	407.80
Level 5	
First Cook (Grade 1), or Cook working alone Gardener/Groundsperson, Grade 2 Sewing Supervisor	416.20
Level 6	
Senior Gardener/ Groundsperson, Grade 1 First Cook, Grade 2	424.50
Level 7	
Senior Gardener/ Groundsperson, Grade 2 Tradesperson Cook	441.20
Level 8	
Head Groundsperson	524.60

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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.

WESTERN AUSTRALIAN MINT SECURITY OFFICERS' AWARD 1988
No. A 5 of 1988.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

The Western Australian Mint.

No. 393 of 1996.

Western Australian Mint Security Officers' Award 1988 No. A 5 of 1988.

COMMISSIONER A.R. BEECH.

10 June 1996.

Order.

HAVING heard Mr N. Whitehead on behalf of the Applicant and Ms J. Dowling 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 Western Australian Mint Security Officers' Award 1988 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 16th day of June 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 14.—Wages and Allowances: Delete subclause (1) of this clause and insert in lieu the following:

(1) (a) The minimum and maximum of the wage range for qualified security officers shall be as follows, paid fortnightly:

		Per Week $	Arbitrated Safety Net Adjustments 1,2 and 3 $	Per Week $
Senior Security Officer	Min	438.80	24.00	462.80
	Max	454.70	24.00	478.70
Security Officer	Min	410.50	24.00	434.50
	Max	426.40	24.00	450.40

(b) The actual wage of each officer referred to in paragraph (a) hereof shall be a sum determined by the Mint in relation to the officer's merit, diligence and good conduct, which shall first be reviewed six months after appointment as senior security officer or security officer as the case may be, and six-monthly thereafter. On review, an officer's wage may be increased by 10% or 20% of the difference between the relevant minimum and maximum rates prescribed in paragraph (a) hereof. An officer who, upon review, does not receive the maximum 20% increment may apply for a review after a further three months.

(c) The rate of pay of an unqualified security officer shall be $384.30 per week plus the $24.00 arbitrated safety net adjustment, paid fortnightly inclusive of the arbitrated safety net adjustment.

(d) The rate of pay of a Commissionaire shall be as follows, paid fortnightly:

	Per Week $	Arbitrated Safety Net Adjustments 1,2 and 3 $	Per Week $
1st year of employment	384.30	24.00	408.30
2nd year of employment	389.60	24.00	413.60
3rd year of employment	394.80	24.00	418.80

(e) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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.

WOOL, HIDE AND SKIN STORE EMPLOYEES' AWARD.

No. 8 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Albany Woolstores Pty Ltd and Others.

No. 480 of 1996.

Wool, Hide and Skin Store Employees' Award.

No. 8 of 1966.

COMMISSIONER R.H. GIFFORD.

28 May 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Mr M. Darcy and Ms C. Brown (as Intervenor) 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 Wool, Hide and Skin Store Employees' Award No. 8 of 1966, 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 23rd day of May 1996.

(Sgd.) R. H. GIFFORD,
[L.S.] Commissioner.

Schedule.

Clause 13.—Wages and Classification Structure. Delete subclause (4) of this clause and insert in lieu thereof the following:

(4) Total Wage Rates (Adults)

The total wage rate per week (inclusive of the rates described in subclauses (2) and (3) of this clause which appears in columns 2 and 3 respectively, plus the amount of safety net adjustment included in column 4) for adult employees performing the work described by any of the classifications detailed in subclause (1) of this clause shall be as detailed in column 5 of the table below with effect from the beginning of the first pay period commencing on or after 23 May 1996.

Column 1 Classification	Column 2 Base Rate	Column 3 Supplementary Payment	Column 4 Arbitrated Safety Net Adjustments	Column 5 Total Rate
	$	$	$	$
Storeworker Level 1	328.70	46.80	24.00	399.50
Storeworker Level 2	337.50	48.00	24.00	409.50
Storeworker Level 3	345.10	49.10	24.00	418.20
Storeworker Level 4	354.30	50.40	24.00	428.70
Storeworker Level 5 —Wool Classer	365.20	52.00	24.00	441.20
Storeworker Level 6 —Overlooker	383.50	54.60	24.00	462.10

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

INDUSTRIAL MAGISTRATE— Complaints before—

IN THE INDUSTRIAL MAGISTRATES COURT
HELD AT PERTH
WESTERN AUSTRALIA

Date of Hearing: 10 April 1996

Delivered: 9 May 1996

BEFORE: R.J. GETHING SM.

Complaint No. 242 of 1995.

COMPLAINANT — ALICE MAREE CLARKE

and

DEFENDANT — NOVEK PTY LTD.

AND

Complaint No. 243 of 1995.

COMPLAINANT — JOANNE MAREE WOOLFREY

and

DEFENDANT — NOVEK PTY LTD.

Mr M. Lourey appeared for the Complainants
Mr T. Smetana appeared for the Defendant.

Reasons for Decision.

These complaints were heard together because of the common factual situation, and it is appropriate that these reasons cover both complaints jointly.

The Complainants, Miss Clarke and her former fellow worker, Miss.Woolfrey, were employed as console operators at a Shell service station at Karawara. The service station was owned by The Shell Company of Australia Limited (Shell) and was operated by Durba Springs Pty Ltd (Durba Springs) pursuant to a franchise agreement with Shell. The Complainants were both employed by Durba Springs.

Durba Springs ceased to operate the service station at the close of business on the 22nd November, 1995 and its franchise agreement terminated: on the 23rd November,1995 it was replaced as operator of the service station by the Defendant, Novek Pty Ltd (Novek) pursuant to a franchise agreement Novek had with Shell.

The issue in this matter involves the nature of continuing employment at the service station of each of the Complainants.

Novek offered to both Complainants employment at the service station which amounted to continuation of their present jobs, but this employment was subject to the condition that each of them sign, and agree to work under, a workplace agreement (the agreement) which Novek produced. Eventually, Miss Clarke declined the offer of employment because she did not wish to sign the agreement, and Miss Woolfrey reluctantly accepted the condition, signed the agreement and continued to work at the service station, then being employed by Novek.

Miss Clarke gave evidence that she did not sign the agreement because she wanted to work under the award and not the agreement, and Miss Woolfrey accepted the agreement because, although she wanted to work under the award, she needed her job.

Both Complainants immediately made the present complaints against Novek alleging in each that Novek, by threats and intimidation, had persuaded or attempted to persuade each of them to enter into an agreement under the Workplace Agreements Act,1993 (the Act), contrary to Section 68 of the Act.

The relevant portion of s68 of the Act states:

> "68 (1) A person must not by threats or intimidation persuade or attempt to persuade another person to enter into, or not enter into—
>
> (a) an agreement under this Act; or
>
> (b) an agreement under this Act that contains or does not contain particular provisions."

After Miss Woolfrey had signed the agreement, Novek sought to register the agreement with her under Sections 28—31 of the Act. The Commissioner has not yet registered that agreement under the Act because he is not satisfied that the Agreement complies with Sec 30 of the Act. Mr S.W. Moir, who is a duly appointed officer under the Act, gave evidence that because Miss Woolfrey has brought the present complaint, he is not satisfied that she genuinely wishes the agreement to be registered. See Sec 30(1)(d) of the Act. He did not discuss the matter with Miss Woolfrey. I think the Commissioner is waiting the outcome of this hearing.

The direct issue in this matter is whether the conduct of Novek's director in requiring Miss Clarke to sign the Agreement constitutes a threat as alleged. This issue comprises three questions:

(a) the question of law that the requirement of signing a workplace agreement as a pre-condition to employment can constitute a threat or intimidation;

(b) whether the requirement in this case was, in fact, a threat or intimidation to Miss Clarke and/or Miss Woolfrey; and

(c) whether the threat was for the purpose of persuading the Complainants to sign the agreement.

There appear to be three situations in which the issue can arise:

> The first is where an existing employee with the same continuing employer is being required to enter into a workplace agreement as a condition of the continuation of his employment;
>
> The second is where a person applying for completely new employment with a prospective employer is required to sign a workplace agreement as a condition of employment; and
>
> The third situation is where an employee is wishing to continue at the same job, but under a contract of employment with a new employer, as the business in which the employee is working has been taken over by that new employer, and the new employee requires the employee to sign a workplace agreement as a condition of that new employment.

This matter is of the third of these situations.

The facts upon which this action is founded are based upon two meetings which the Complainants had with a Director of Novek, Mr Kevin Arthur Wealand.

Mr Wealand attended at the service station, introduced himself and Novek, obtained self assessed profiles of the employees at the service station, and left with each of them forms, including a form of application for employment with Novek. That meeting appears to have been on the 14th November, 1995.

On the 22nd November, 1995, the last day that Durba Springs was to operate the service station, Mr Wealand returned to the service station, discussed matters with the employees separately, and offered each of the Complainants employment at the service station with Novek, which they both indicated they would accept. They then met together and Mr Wealand produced a code of the conduct which Novek expected of employees and a workplace agreement, which is the agreement in issue, which Novek expected employees to sign. They went through the agreement, clause by clause, Mr Wealand explaining each clause. A point of dispute has arisen whether this was the first mention of the agreement, or if Mr Wealand had mentioned it earlier; nothing turns on this point.

The evidence of relevant conversation about the agreement is:

Miss Clarke's evidence was:

> "Joannne (Woolfrey) said: "If we don't sign it does it mean that we don't get the job?" He (Mr Wealand) said: "basically, yes."
>
> I left it at that; I did not want to argue with the man.
>
> I was stunned.
>
> I telephoned him the following day and declined his offer (of employment.)"

Miss Woolfrey gave evidence:

> "I asked: "If we didn't sign it did we still have the job." He said: "No."
>
> He said he would prefer to have all his staff on the workplace agreement, words to that effect.
>
> I took the agreement home and discussed it with my father and some friends
>
> I didn't like it
>
> I signed it to keep my job.
>
> I understood if I didn't sign it I would lose my job."

Mr Wealand gave evidence:

> " Miss Woolfrey asked me: "is employment conditional on the workplace agreement?" and I said: "Yes as per yesterday."
>
> Then Alice (Miss Clarke) asked a similar question: "What do you mean, is this a condition of employment?" or words to that effect."
>
> He told them he wanted them to sign the agreement straight away, but each of them asked if they could take it home and read it. He agreed. He said:
>
> "I asked that it be returned the following day, the day of the acquisition: I needed to do that to confirm the shift rosters."

I do not accept Mr Wealand's account of the conversation: it appears to be an opportunistic attempt to make it appear that the Complainants both recognised the status of the agreements as conditions of employment. The question recited by the Complainants as being asked of Mr Wealand by Miss Woolfrey, is the sort of practical question I would expect to be asked by a person in Miss Woolfrey's position.

Miss Woolfrey signed the agreement the following day, the 23rd November, the day on which Novek commenced to operate the service station. Mr Wealand said that if she had not signed the agreement she would not have commenced working for Novek. He said that he had alternative arrangements for manning the service station that morning if Miss Woolfrey had not signed the agreement.

It is clear from the above that the conversations and what happened indicated that Novek, through Mr Wealand, put an ultimatum to the Complainants that if they did not sign the agreement they would not be employed by Novek. Translated into the terms of the Complainants, it meant that their employment at the service station would cease, as it did for Miss Clarke. I do not accept Mr Wealand's evidence that Miss Clarke declined to sign the agreement because she wanted to continue working for Durba Springs.

The agent for Miss Clarke and Miss Woolfrey made submissions that:

1. It was the intention of the legislation that an employee would not lose his/her employment by reason of declining to sign a workplace agreement;
2. Both of the Complainants were employed at the service station and desired to continue that employment;
3. Both were offered continued employment at the service station, with Novek, but only if they signed the agreement;
4. Miss Clarke declined to sign the agreement and was not continued in her employment at the service station;
5. Miss Woolfrey signed the agreement only because she wanted to continue working at the service station;
6. The ultimatum made by Novek through Mr Wealand constituted intimidation or a threat to both Complainants. that each would not have employment at the service station if she did not sign the agreement.

Counsel for the Defendant submitted that:

1. The requirement to sign the agreement was a condition precedent to employment with Novek;
2. Both Complainants' employment at the service station with Durba Springs terminated at close of business on the 22nd November;
3. The proposed employment with Novek was by an entirely new contract of employment and did not constitute continuing employment;
4. Novek did not intimidate or threaten the Complainants but offered them employment, a condition of which was that they enter into a workplace agreement with Novek; and
5. Novek did not attempt to persuade the Complainants to enter into the agreements.

The agent for the Complainants is using the term 'employment' in the sense of merely being employed, or working, and the term 'continuing employment' in the sense of continuing to be employed, or continuing to work, at the same job.

In support of the submission for the Complainants, their agent referred to a decision of a Long Service Leave Board of Reference under the Long Service leave Act, 1958 (W.A.) in B.PARKER and HUGIN WA PTY LTD. 67 WAIG (1986)p.87. in which it was held that where there was transmission of a business within the meaning of s4 of that Act, the unbroken employment of an employee from the transmitter employer to the transmittee employer, constituted continuous employment. That decision is of no help to the complainants in the present matters because that employment was deemed to be continuous employment by virtue of s6(2)(a) of that Act, and by that section, that deeming provision is expressly only for the purpose of that Act. Further, that decision would assist an argument against the Complainants' submission by reason that there would be no need for such a deeming provision unless in those circumstances there was ordinarily no continuous employment.

Counsel for the Defendant is using the term 'employment' in the sense of working pursuant to a contract of employment with a particular employee.

The term 'employment' must be used in the sense used by the Defendant. There is a clear distinction between merely working and being employed. Being employed denotes a person being used by an employer to do work for reward. Thus a voluntary worker would not be said to be employed.

I find that the Complainants were both employed by Durba Springs and if they wished to continue working at the service station, their employment would terminate and they would have to enter into a new contract of employment with Novek. Some support for this view is found in the decision of the House of Lords in NOKES *v.* DONCASTER AMALGAMATED COLLIERIES, LTD. (1940) 3 All E.R. 549. in which it was held that "an order made under the Companies Act,1929, s154 (to transfer the property, rights and liabilities from one company to another) does not automatically transfer contracts of personal service, which are in their nature incapable of being transferred....."

By this finding I am rejecting the Complainants' submission that their proposed continuation of work at the service station would be continuation of the employment they had with Durba Springs.

S68 of the Act appears to be directed to prevent employers from coercing existing employees into accepting workplace agreements, although the words 'any person' clearly indicate that the prohibition is not limited to employers and therefore the Defendant can be caught by its provisions if the conduct of its director, Mr Wealand constitutes intimidation or a threat made to persuade, or as an attempt to persuade, either of the Complainants to enter into the agreement.

'Intimidation' means to make a person timid so as to reduce the exercise of that person's will. The definition of 'threat' or 'threaten' in the dictionaries is widely expressed, but is basically: to try to influence by menaces. There must be three elements: an indication by words or conduct, an intention to cause, and to cause some harm or detriment. The harm or detriment threatened need not be an unlawful effect: it could be unlawful, such as: "if you don't give me your money I will shoot you;" or it could be lawful: such as : "If you don't pay your debt, I will take you to court." Both of these statements constitute threats. The alleged threat in this matter is not to cause some unlawful harm.

I referred above to three situations in which a person might require another person to enter into a workplace agreement. In the first of these situations—the employer making the requirement of an existing employee—the threat is: if you don't sign you will lose your (existing) job. That threat appears little different from the threat in the second situation: if you don't sign you will lose your opportunity of a job; or the threat in the third situation; if you don't sign you will lose the continuation of your present job. In each situation the threat will be the same, that is, the loss of future employment. The differences between the first of the three situations and the other two, is: (a) the status of the person making the requirement, that is, employer or prospective employer; and (b) in the first, the person threatens to take away the employee's existing employment; in the second, the person threatens to refuse to give employment and in the third the person threatens to cease the applicant's existing job by refusing to employ. As to (a), we have shown that the status of the person does not matter, and as to (b), whichever way it is expressed, there still remains a threat.

I find that by indicating to both Complainants that if each did not sign the agreement she would not be employed, the Defendant made a threat to each Complainant.

There is another difference in the three situations referred to above. In the first situation, if the employer wanted to have any existing employee to enter into a workplace agreement, he would have to persuade that employee to sign that agreement; in the other two situations, if the prospective employer wanted an applicant for employment to enter into a workplace agreement, he might not wish to try to persuade that applicant to sign the agreement. Without any pressure at all, he could present the agreement to the applicant and give the applicant the option to sign or not to sign. He might say that signing the agreement is a condition of employment, like a condition of having appropriate qualifications or experience, and if the applicant cannot meet the condition the employment is not available. This appears to be the sense in which Novek has presented the agreements to the present Complainants, and there is no evidence that Mr Wealand tried any other persuasion of the Complainants to sign them. That would not be enough to displace the threat to persuade, because however nicely and passively the requirement to sign the agreement is expressed, it still constitutes a persuasion to sign it, because inherent in the condition: 'if you do not sign the agreement you will not be employed,' is the pressure, the persuasion, to sign the agreement. That persuasion is evidenced by the action of Miss Woolfrey, who signed the agreement because she needed to keep her job, and not because she preferred the agreement to the award: she was persuaded by the threat in the condition put to her. So it does not matter that Novek did not intend the condition to be a threat: inherently it was both a threat and persuasion to sign the agreement. I so find.

I considered the question whether or not Parliament intended the section to apply to the present situation: I could find little assistance from the Parliament debates: the question was clearly raised but not answered. An answer that was given was that an applicant should sign the workplace agreement then refer

it to the Commissioner. That the answer referred to s30 of the Act, which states:

30. (1) Where an agreement is lodged with the Commissioner under section 29 the Commissioner is to satisfy himself or herself—

(a) that the agreement complies with this Act;

(b) that each party to the agreement appears to understand his or her rights and obligations under the agreement;

(c) that no party to the agreement was persuaded by threats or intimidation to enter into the agreement; and

(d) that each party to the agreement genuinely wishes to have the agreement registered.

In the present matter Miss Woolfrey did not refer her complaint to the Commissioner, (she probably didn't know that she could) but when the Commissioner's officer, the witness, Mr Moir, learnt of this complaint, he declined of his own volition to register the agreement as referred to above. I think this is not a satisfactory way of ensuring that entering into a workplace agreement is entirely voluntary: it did not help Miss Clarke, and it would cause applicants to act deceitfully.

S12(1)(b) of the Act does cover the situation of a business in which employment is pursuant to workplace agreement being transferred from one proprietor to another, but that section provides no assistance in the present matter.

I see no material difference between the threat disclosed in this matter (no sign, no start) to the threat to an applicant for employment in the condition that he cannot be employed unless he has union membership (no ticket, no start). I readily admit that this is merely an observation and not a legal argument, and I have not relied upon it in coming to this decision.

In Complaint No 242/95, of Miss Clarke and Novek, I find, and I am satisfied beyond reasonable doubt, that Novek, by a threat, attempted to persuade Miss Clarke to enter into a workplace agreement, and that the complaint has been proved.

In Complaint No 243/95, of Miss Woolfrey and Novek, I find, and I am satisfied beyond reasonable doubt, that Novek, by a threat, persuaded Miss Woolfrey to enter into a workplace agreement, and that the complaint has been proved.

R.J. GETHING,
Industrial Magistrate.

SECTION 23— Miscellaneous matters—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr R.A. Firth

and

The Minister for Education.

No. 269 of 1996.

COMMISSIONER A R BEECH.

17 May 1996.

Order.

WHEREAS an appeal pursuant to section 23B of the Industrial Relations Act 1979 was lodged in the Commission;

AND WHEREAS the applicant subsequently lodged a notice of discontinuance;

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 appeal be discontinued.

(Sgd.) A. R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Red Cross Society (Western Australian Division)

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. 53 of 1995.

COMMISSIONER C.B. PARKS.

22 May 1996.

Order.

HAVING heard Mr P.G. Robertson on behalf of the Applicant and Mr D. Kelly 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 this application by and is hereby wholly discontinued.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alison Faye Bodell

and

LJ Hooker Mirrabooka.

No. 1261 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

16 April 1996.

Reasons for Decision.

SENIOR COMMISSIONER: This is an application pursuant to Section 29 of the Act, in which the applicant alleges unfair dismissal and denial of contractual benefits.

When the matter came on for hearing it emerged that the applicant had finally obtained another position and was not therefore seeking reinstatement. However, the contractual benefit claims as follows remain—

"Six weeks wages for each week I was unemployed" total $1798.73.

"Petrol Allowance —

13 weeks x 25km x 0.44 = $143.00

13 weeks x 75km x 0.44 = $429.00

TOTAL $572.00

During the hearing of the matter the applicant tendered to the Commission a copy of a letter addressed to Mr M. Clay, L. J. Hooker Mirrabooka dated 16/2/96, which sets out in detail the kilometre's travelled, allegedly on official business whilst employed by the respondent. The total kilometre's claimed is 1463.8 kilometres, however no monetary rate per kilometre is shown therein.

The applicant's evidence and submissions are that, on turning eighteen years of age, which entitled her to a wage increase under the relevant award, and advising the respondent of this event led to the termination of her services. Further the applicant denies the claims of either poor or continued poor performance, as alleged by the respondent. Set out hereunder are the extracts from a document on the file, prepared by the respondent and headed Alison Bodell Introduction.

"...ALISON BODELL COMMENCED WORK ON THE 4TH MAY, 1995.

FIRST MEETING END OF ONE MONTH: 6TH JUNE, 1995

MICHAEL CLAY TOOK MEETING

DISCUSSED A GENERAL SATISFACTION WITH HER WORK BUT INDICATED A FEW AREAS THAT SHE COULD IMPROVE LIKE PICKING UP MAIL OUT OF MY TRAY DAILY, EMPTING RUBBISH BINS AND PUTTING BINS OUT ON A TUESDAY NIGHT, NOT SENDING MAIL OR DOING BANKING TENDED TO FORGET. BUT THOUGHT SHE WOULD DO THESE THINGS AS TIME WENT ON.

SECOND DISCUSSION: 26TH JUNE, 1995

MICHAEL CLAY TOOK MEETING

ALISON WAS SPOKEN TO IN REGARDS TO HER STANDARD OF DRESS, NOT DOING HER HAIR AND WEARING NO MAKE UP AND GENERALLY GIVING A BAD IMPRESSION OF THE COMPANY SEEING AS SHE WAS THE FIRST CONTACT THE PUBLIC HAD WITH OUR COMPANY.

THIRD DISCUSSION: 21ST JULY, 1995

MICHAEL CLAY TOOK MEETING

ALISON WAS TRYING TO TAKE CONTROL OF OFFICE AND NOT PASSING MESSAGES ON AND INFORMATION ONTO THE PROPERTY MANAGER AND NOT GIVING MESSAGES TO SALES PEOPLE.

FOURTH DISCUSSION AND FIRST WARNING: 21ST AUGUST, 1995

MICHAEL CLAY AND BRONIA SMITH TOOK MEETING

A LETTER WAS GIVEN OUTLINING AREAS THAT ALISON HAD BEEN REPEATABLY REMINDED TO DO BUT HAD FAILED TO DO, ALONG WITH A GENERAL WARNING TO IMPROVE HER ATTITUDE AND WAS ALSO GIVEN ONCE AGAIN A COPY OF HER JOB DESCRIPTION AND PROCEDURES. WE INDICATED THAT SHOULD SHE NOT IMPROVE HER WORK STANDARD HER JOB WAS AT RISK.

FIFTH DISCUSSION: 15TH SEPTEMBER 1995

BRONIA SMITH TOOK MEETING (ON MICHAEL'S ADVICE AS MICHAEL WAS ON A COURSE)

ALISON WAS NOT TAKING THE PHONE OFF DIVERSION WHEN FIRST GETTING TO WORK, IT WAS BEING LEFT ON AS A REGULAR OCCURRENCE, THE DAY BEFORE UNTIL 10.15AM ALSO STARTING WORK LATE.

ALISON WAS ADVISED THAT IF SHE COULDN'T BE ON TIME TO OPEN OFFICE AND TAKE PHONE OFF DIVERSION BY 9AM HER STARTING TIME WOULD BE CHANGED TO 8.30AM OR WE COULD FIND SOMEONE WHO COULD GET TO WORK ON TIME AND WANTED A JOB.

SIXTH DISCUSSION AND SECOND WARNING: 12TH OCTOBER, 1995

BRONIA SMITH TOOK MEETING

WORK SITTING ON DESK NOT BEING PROCESSED, WARNING AGAIN ABOUT NUMEROUS PRIVATE PHONE CALLS, PROPERTY CONDITION REPORTS NOT BEING TYPED FOR SEVERAL WEEKS, FILING NOT DONE, HOMEBUYER BOOKS NOT STAMPED. I ALSO TOLD ALISON THAT NEXT TIME I SPOKE TO HER WE WILL BE TERMINATING HER.

SEVENTH DISCUSSION AND TERMINATION: 1ST NOVEMBER, 1995

BRONIA SMITH TOOK MEETING

I TOLD ALISON THAT WE HAVE GIVEN HER ENOUGH CHANCES TO IMPROVE HER WORK BUT STILL WAS NOT SATISFACTORY, HER WORK WAS STILL SITTING ON THE DESK AND NOT BEING COMPLETED AND OTHER DUTIES WERE NOT BEING MET."

In his evidence Mr M. Clay essentially confirmed the above document. The applicant's evidence on the above allegations is as follows—

"...Second discussion, he's got that—- he spoke to me regarding my standard of dress, not doing my hair and wearing no make-up, and he's saying that, I gave a general bad impression of the company. There's no way that I agree with that. I wasn't spoken to regarding the way I dress and the way my hair is, because every day I go to work; I wear make-up; I do my hair; and I wear the appropriate clothes. So, he—- there was once actually when I didn't wear make-up because I had a skin rash on my face, so I didn't wear make-up for about a week and then Michael actually got the property manager to say, would I wear make-up to work—- which I then explained to her the reason why, and then after the skin rash was gone, I did continue to wear make-up and so I was never unpresentable for work, and there was never a discussion that took place with Michael regarding that...."

(transcript pg 3)

"...Yes, because I honestly don't understand that, because I was not taking over the office. So, I don't agree with that conversation either, because that never took place. The fourth discussion was actually my first warning that he gave. That actually came after I went on a week's course. Like, I agree with that conversation. It did take place. I went on a course for a week. During that course, I actually worked the Saturday over that week and a half. Bronya(sic) Smith, who was like the property manager there—- she spoke to me on the Saturday when I came in, and she gave me my three month—- like trial was over. She sat me down and she said everything was going fine. There was no indication that there was anything wrong..."

"...Immediately, without asking what had happened, Michael decided to take $50 out of pay, because he said it was just to teach me a lesson...."

"...The next day, the Tuesday I rung him up just to let him know that he couldn't do it, and unless he could prove that I took the money, there was no way that he could—- like take $50 out of my pay. Then the next Monday, the 21st of August, I turned up after my examination from my course. I got taken into Michael's office and Michael gave me a job description and he gave me a first warning, outlining a few things that I wasn't doing right, and that was my first warning. But that came after an incident where I told him that he couldn't punish me—- like for money going missing, and I just feel that was his way of making sure that—- you know, that something happened to me over the $100. So, that was the fourth discussion...."

"...I don't agree with the fifth discussion ever taking place. There was twice when I forgot to take the phones off divert and Michael was on a course that week. There was never actually a sit down discussion. It was just mentioned in passing when Bronya(sic) walked in the office. She goes, "Oh, the phones are on divert. Can you just take them off?" So, it was never actually made a huge deal out of, and it was only twice that happened and that it never happened again. Okay, the sixth discussion and second warning on the 12th of October. He's got that I had work sitting on my desk. I just want to know—- like what work was on my desk, because the day I was terminated, there was no outstanding work on my desk, except for one ...(indistinct)... which had been given to me the day before. Other than that, there was no work sitting on my desk whatsoever, and there was never a second warning ever given to me, in writing, spoken to...."

"..."Here's your reason for getting fired. Here's your two weeks in—like one week in lieu of wages", and I was told to get out there and then on the spot. Bronya(sic) actually walked me to the front desk, told me to give her the keys and anything that I had to the office. She then escorted me to the door, opened the door and stood there until I actually walked out the door. So that was the termination and I agree with that, but I don't think it was done right...."

(transcript Pgs 4 and 5)

As is unfortunately often the case, the outcome of the matter centres upon the Commission's findings based upon it's assessment of the witnesses demeanour, and overall presentation of their evidence. Upon balance of probabilities the Commission finds—

(A) The applicant's request for a salary increase led to an initial review of her employment which was satisfactory to the respondent.

(B) The later complaints, by the respondent about the applicant's performance were satisfactorily answered by the applicant then and in these proceeding's.

(C) Notwithstanding the letter of Mrs B. Smith (on file) where the applicant's evidence conflicts with the respondent's, I prefer the evidence of the applicant.

Thus it follows that the applicant was unfairly dismissed and the Commission so finds.

As the applicant has finally obtained other employment it is not practicable to order reinstatement in the former employment. The Commission having regard to the length of the employment, level of the duties and responsibilities carried and time required to find other employment in the case here, determines an amount of Six Hundred Dollars ($600) as compensation for unfair dismissal. The contractual benefit of is not now disputed but the kilometres travelled and the rate per kilometre are disputed between the parties.

In the result, having regard to the evidence and to the letters of 16th February 1996, by the applicant and the respondents reply of 18th March 1996, one thousand kilometre's at an overall rate of 23.5 cents per kilometre (an amount of $235.00 dollars) is warranted and is awarded by the Commission.

Appearances:

Ms Alison Bodell appeared on her own behalf.

Mr M. Clay appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alison Faye Bodell

and

LJ Hooker Mirrabooka.

No. 1261 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

9 May 1996.

Order.

HAVING heard Ms A. Bodell on her own behalf and Mr M. Clay on behalf of the Respondent, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. That an amount of Six Hundred Dollars ($600) be paid to Ms A. Bodell as compensation for unfair dismissal.
2. An amount of $235.00 dollars for vehicle mileage allowance shall be paid to Ms A. Bodell.
3. The above amounts shall be paid to Ms A.F. Bodell by the respondent in not more than fourteen (14) days from the date of this Order.

(Sgd.) G.G. HALLIWELL,

[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr BS Byass

and

Kwinana Mechanical Repairs
Pty Ltd.

No. 417 of 1996.

COMMISSIONER C.B. PARKS.

29 May 1996.

Order.

WHEREAS there has been lodged in the Registry of the Commission a Notice of application in the name of Bradley Stephen Byass, and

(a) therein the applicant alleges he had been unfairly dismissed; and

(b) therein the applicant cites the respondent to be "Industrial Relations Act. Level 16, 111 St Georges Tce, Perth"; and

(c) thereon appears the signatures "B.S. Byass"; and

(d) thereon is affixed the stamp of the Registrar, dated 29 February 1996; and

(e) thereon is affixed the identifying number, "417 of 1996"; and

(f) thereon appears the handwritten endorsement "$5.00 (by post) 437904 (an illegible initial) 13/3/96"; and

WHEREAS there has been lodged in the Registry of the Commission a Notice of Application in the name of Bradley Stephen Byass, and

(g) therein the applicant alleges he had been unfairly dismissed; and

(h) therein the applicant cites the respondent to be "Kwinana Mechanical Repairs"; and

(i) thereon is affixed the stamp of the Registrar, dated 13 March 1996; and

(j) attached thereto are the purported particulars of the claim; and

WHEREAS a Notice of Answer and Counter Proposal was filed in the Registry of the Commission, on behalf of Kwinana Mechanical Repairs Pty Ltd which—

(i) cites the named company to have employed and dismissed the applicant; and

(ii) asserts that no valid Notice of Application has been filed by the applicant within the time prescribed by s.29 of the Industrial Relations Act, 1979 (the Act) and therefore the Commission does not have the jurisdiction to deal with the application; and

(iii) denies that the dismissal of Mr Byass had been unfair.

WHEREAS by a notice dated 7 May 1996 the commission issued notice to the parties, by post, that it would hold a conference pursuant to s.32 of the Act in an attempt to resolve the matter by conciliation; and

WHEREAS the applicant failed to attend the time and place scheduled for the conference on 22 May 1996;

AND WHEREAS the respondent company was represented at the time and place scheduled for conference on 22 May 1996, by Mr Logan and Ms Toigo, and by Mr R. Kerferd (of counsel), and thereat counsel moved the Commission to strike out the application on the basis such was not valid and had been filed outside of the prescribed time limit;

NOW THEREFORE, the Commission being satisfied that—

(1) the Notice of Answer and Counter Proposal was served upon the applicant on 19 April 1996;

(2) the notification to the applicant of the time and date scheduled for a conference pursuant to s.32 of the Act was forwarded to the applicant by post on 7 May 1996, at the address given by him in his Notices of Application;

(3) the notification referred to in (2) hereof has not been returned to the Commission by the postal authorities and such has therefore been received by the applicant.

(4) neither of the Notices of Application lodged in the Registry are valid applications and should not have been received by the Registry in that—

(a) the notice referred to in paragraphs (a) to (f), both inclusive, does not name the respondent to whom it is directed, does not state the grounds upon which the application is brought, and does not state the particulars of the claim; and

(b) the notice referred to in paragraphs (g) to (i) both inclusive, is not signed by the applicant, or any other person on his behalf;

(5) the invalid Notice of Application, which bears the stamp of the Registrar dated 29 February 1996, and is referred to in paragraphs (a) to (f), both inclusive, has been erroneously registered, and therefore filed, on 13 March 1996 when endorsed with that date to signify that the regulation filing fee had been received and accepted;

(6) The filing of the aforementioned application on 13 March 1996 constitutes the referral of the claim to the Commission, by Mr Byass, more than 28 days after the day on which his employment terminated, that is, 8 February 1996;

the Commission, pursuant to the powers conferred on it under the Act, hereby orders:

THAT application No. 417 of 1996 be and is hereby dismissed.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Daniel Corness
and
Southcorp Whitegoods.
No. 1198 of 1995.

COMMISSIONER A R BEECH.

23 May 1996.

Order.

WHEREAS an application was lodged in the Commission for an Order pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979;

AND WHEREAS the applicant advised the Commission that he wished to withdraw the application;

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 withdrawn by leave.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Derrick Charles Crowe
and
Agrosoke Aust Pty Ltd t/a Yes Environmental Products, and Others.
No. 1224 of 1995.

COMMISSIONER C.B. PARKS.

29 May 1996.

Reasons for Decision.

THE COMMISSIONER: The Applicant, Mr Crowe, alleges that he had been engaged by the Respondent as an employee and Manager of the Yes Environmental Products, the trading operation of the Respondent's business. It is his complaint that he has not received monetary benefits from the Respondent to which he was entitled under his contract as an employee.

The Respondent does not deny that it had had a relationship with the Applicant, but denies that the nature of it was one of employer and employee. It is contended that absent an employer and employee relationship having existed between them, the Commission is not empowered to deal with the application made.

A paucity of information has been provided by the Applicant to assist the Commission in the task of establishing the nature of the relationship he held with the Respondent. Primarily the Commission is asked to accept that the relationship had been one of employer and employee because that is the opinion of Mr Crowe. No facts have been displayed to establish that, if such was able to be established, the circumstances which pertained to that relationship made it an employer and employee relationship.

One document was submitted to the Commission titled "Pledge Dollar Service and Goods Agreement" (Exhibit 1) which, notwithstanding how the parties are described therein, I am satisfied was made between the Applicant and the Respondent in February 1995. According to its terms, the Agreement incorporates, via Appendix A, what is described as the "Pledge Dollar Rule Book", however such was not exhibited to the Commission. The Respondent asserts that the terms of the exhibit provide evidence that the relationship the Respondent had with the Applicant was not one of employer and employee. Mr Cooke described the agreement as being applicable to—

> "... a consultancy arrangement, where no restrictions were placed on Mr Crowe as to how he was to undertake the services (he provided) or when he was to undertake certain services. There was no mandatory numbers of hours that Mr Crowe had to provide these services ... on his own admission he was paid on an hourly rate ...".

I am unable, from the terms of the "Pledge Dollar Service and Goods Agreement" (Exhibit 1) to determine what was the nature of the relationship between the parties. There is an absence of any evidence from Mr Crowe to assist the Commission to analyse the nature of the relationship he had held with the Respondent and hence determine whether his status had been that of an employee.

The hearing of this matter concluded on 11 April 1996 at which date the Commission reserved its decision. On the next following day the Commission received a letter from Mr Crowe wherein he sought to supplement the argument put to the Commission in hearing, and to have the Commission take cognisance of documents he enclosed. As a consequence I caused my Associate to write to Mr Crowe on 16 April 1996 and advise him "... it is not proper for the Commission to consider the documentation you wish to submit unless the hearing is re-opened and the Respondent has an opportunity to address the Commission thereon" and further, "(T)he documentation is hereby returned to you and will not be considered by the Commission unless the hearing of your matter is re-opened. If you wish the latter to occur, please advise the Commission and Respondent in writing, following which the parties will be heard as to whether the matter ought be re-opened". In the interests of natural justice, the Respondent was informed of the correspondence received from

the Applicant and, on 18 April 1996, a facsimile transmission in response thereto was received by the Commission wherein an objection was taken to the matter being re-opened before the Commission. On 24 April 1996 Mr Crowe notified my Associate by telephone that he did not wish to pursue a re-opening of the matter and would be content with it being decided upon that which had been put to the Commission in hearing.

As outlined earlier herein, the Applicant failed to produce any indicia that he had been an employee of the Respondent who had been dismissed and therefore the Commission finds that it does not have the jurisdiction to deal with the matter before it. Hence the application will be dismissed.

Appearances: Mr D.C. Crowe on his own behalf.

Mr R. Cooke appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Derrick Crowe

and

Agrosoke Aust Pty Ltd t/a Yes Environmental Products and Others.

No. 1224 of 1995.

COMMISSIONER C.B. PARKS.

29 May 1996.

Order.

HAVING heard Mr D.C. Crowe on his own behalf and Mr R. Cooke on behalf of the Respondent 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.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sheryl Demamiel

and

Geraldton Health Service.

No. 585 of 1996.

COMMISSIONER C.B. PARKS.

6 June 1996.

Order.

WHEREAS on 9 April 1996 an application alleging unfair dismissal was filed in the Commission pursuant to s.29 of the Industrial Relations Act, 1979; and

WHEREAS the matter was listed for a s.32 conference and, if necessary, a hearing on 20 May 1996 at Geraldton Court House; and

WHEREAS on 20 May 1996 the agent for the applicant attended the Geraldton Court House prior to the time scheduled for conference and notified the Commission that the matter had been resolved, and that the applicant sought to discontinue the matter;

AND WHEREAS the Commission orally granted leave for the application to be discontinued and the conference and hearing were therefore vacated;

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 on and from 20 May 1996.

(Sgd.) C.B. PARKS,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Helen Susan Gates

and

The Anglican Schools Commission (Inc.) and Association of Independent Schools of Western Australia, Union of Employers (Inc.).

No. 466 of 1995.

CHIEF COMMISSIONER W.S. COLEMAN.

20 May 1996.

Order.

THIS matter has been the subject of investigation pursuant to Regulation 9 of the Industrial Relations Act, 1979;

AND WHEREAS notification of these proceedings were sent to the parties and there being no appearance on behalf the Applicant and Dr I. Fraser on behalf of the Respondents;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this matter is dismissed pursuant to Section 27 of the Act.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Orm Girvan

and

Communiquardo Pty Ltd.

No. 1226 of 1995.

COMMISSIONER C.B. PARKS.

24 April 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

THE COMMISSIONER: The application by Mr Girvan asserts that he had been an employee of the respondent and that for several periods during the employment he was not paid the weekly remuneration, or part thereof, due to him, based on a rate of $600.00 per week. An additional claim to $815.00, allegedly owed to him by another party and paid to the respondent but not passed to Mr Girvan by the respondent, was not pursued before the Commission, and rightly so.

It is denied on behalf of the respondent that it had had an employment relationship with the applicant and hence it was said that, absent such a relationship, the Commission does not have jurisdiction to deal with the matter before it.

The agent for Mr Girvan, Mr Crowe, a person who also has an action in this Commission against a related company, submitted that the employment had occurred through the participation of Mr Girvan in a goods and services exchange systemwhere the value of that rendered by one participant to another was recorded in units called "pledge dollars", an agreed number of which were convertible to, and payable in, Australian currency. No oral or affidavit evidence was provided from Mr Girvan. The case presented by his agent was coloured by his own experience from his association with the respondent, was also founded on hearsay, and substantially depended upon inferences being drawn from several documents exhibited to the Commission. In reference to the "Pledge Dollar Exchange System" a document described as a 1993 handbook has been exhibited (exhibit 1) wherein the Commission was directed to the statement—

"A Pledge Dollar member may have the opportunity to be employed by a Peace Shield company and be paid in

> Pledge Dollars using the Pledge Dollar Exchange. Employees tax will be paid on the employee's behalf by the company in 'hard' currency"
>
> (p.11)

This the agent contends is proof that Mr Girvan had been employed by the respondent, an undisputed Peace Shield company, because he participated as a member of the Pledge Dollar Exchange.

A periodical, "Alternative News" (Vol 8 Issue 3), a "Staff Memo" from the respondent (27/06/95), a further copy of the foregoing extract (exhibit A), and a "Notice to all Staff" from the respondent (19/06/95), were exhibited as one group (exhibit 3). That the respondent engaged employees is said to be evident from the text of these several documents. Firstly under the headline—Peace Shield System Expanded Capabilities, which appears in the Alternative News, there are references to both "personnel" and "staff", and thus employees, it is said ie—

> "The Peace Shield Systems facilities and personell (sic) have expanded...."
>
> (p.1)
>
> ".... it is also important that any senior member of the administration staff have an empathy towards the aims and methods of Peace Shield...."
>
> (p.2)

References similar to the lastmentioned also appear throughout the remainder of the Alternative News, says the agent.

Secondly, the Staff Memo (27/06/95), through the use of the word "staff" reflects an additional reference to employees, and also addresses the fact that they are entitled to a remuneration in Australian currency by way of a "Buy Back" of pledge dollars earned, it is asserted. Finally the agent says, the "Notice to all Staff" (19/06/95), also having been directed to "staff" and dealing with the topic of a daily activities log, a log system used only by employees, further establishes that the respondent employed employees.

Mr R. Cooke, a director of Communiquardo Pty Ltd, acted for the respondent. Simply put, the respondent does not deny that it had had a relationship with Mr Girvan which involved the use of his services, but it is denied that the nature of that relationship was one of employer and employee. According to Mr Cooke, Mr Girvan participated in the Pledge Dollar Exchange System whereby he provided his services according to a service exchange system and those which he provided to the respondent were not subject to any regulation and control of the type appropriate to an employee.

Submitted to the Commission is a document which the respondent says is a "Pledge Dollar Service and Goods Agreement" made between the applicant and the respondent (exhibit A), plus "Rules of the Pledge Dollars Exchange" (exhibit B) said to be incorporated into the Agreement by Appendix A thereto. It is said for the respondent that the relationship it had with Mr Girvan is reflected in this Agreement, and significantly, the provisions numbered 1, 2, 4 and 5 (as hereunder quoted) indicate that the relationship was not of employer and employer ie—

> "1. To abide by the rules of the Pledge Dollar Exchange as contained in the Pledge Dollar Rule Book Appendix A in addition to the following terms:
>
> 2. All payments are negotiated and agreed between both trading members and payment will be in Pledge Dollars."
>
> "4. In respect of any tax that may be deemed to be payable by the income tax authorities, it is the member s responsibility and discretion to maintain records of any payments which may be taxable.
>
> 5. The recipient of any payment is responsible for the payment of any tax."

The applicant has the burden of proof to establish that he had been an employee, and then sequentially, that as a consequence of such relationship he was entitled to the benefits which he claims, and finally that he did not receive those benefits. That burden has not been discharged.

The particular extracts from the "Alternative News" to which the Commission was directed, ie the terms "personnel" and "staff", are terms commonly used to describe employees however they also may be used to describe persons who have a different relationship. In the present case they have been used in relation to the Peace Shield System and although the respondent is part of that system, there is no evidence that these terms are used in reference to the operations of the respondent. Although these terms occur elsewhere in the document with specific reference to the respondent, and that is a prima face indication that the respondent may have been party to one or more employer and employee relationships, there is no indication that such existed with Mr Girvan. I note that Mr Girvan is referred to in the document however the article (p.7) provides no assistance as it does not described him as having a particular role, or any role, with the respondent.

Both the "Staff Memo" (27/06/95) and the "Notice to all Staff" (19/06/95) do not, for the reasons given earlier regarding the term "staff", constitute proof that employment relationships existed. But if such relationships did exist, there is no evidence that Mr Girvan was considered one of the staff, nor that copies were directed to him and thus the contents were material to his relationship with the respondent. The "Staff Memo" lists the names of several persons to whom it was directed and who were also expected to signify the receipt thereof by their endorsement. The name of Mr Girvan does not appear in the list. It is therefore probable that the memo was never directed to him because it was not relevant to his relationship with the respondent.

Further, the extract (supra) from the "Pledge Dollar Exchange Handbook" is clearly a general statement which conveys there is a potential for persons to become employees. It does not declare that persons involved in the system will, without exception, become employees. Hence, it provides no insight into Mr Girvan's past relationship with the respondent.

Lastly the "Pledge Dollar Service and Goods Agreement", I am satisfied from the signatures appearing therein, is an arrangement entered into by the applicant and the respondent. Its terms do not assist greatly with this matter for it neither expressly, nor impliedly, reveals the nature of the relationship that the parties entered into, simply that it was to be governed by the named exchange system. I can not discern from this document, or any of them exhibited before the Commission, whether Mr Girvan had been party to a contract of service or a contract for service. It has not been shown that Mr Girvan had been an employee and therefore a person entitled to bring an action to this Commission, accordingly the application will be dismissed.

Appearances: Mr D.C. Crowe appeared on behalf of the applicant.

Mr R. Cooke appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Orm Girvan

and

Communiquardo Pty Ltd.

No. 1226 of 1995.

COMMISSIONER C.B. PARKS.

29 May 1996.

Order.

HAVING heard Mr D.C. Crowe on behalf of the Applicant and Mr R. Cooke on behalf of the Respondent 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.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr David Graffham

and

C. and C. Manufacturing Pty Limited.

No. 1338 of 1995.

CHIEF COMMISSIONER W. S. COLEMAN.

20 May 1996.

Order.

THIS matter has been the subject of investigation pursuant to Regulation 9 of the Industrial Relations Act, 1979;

AND WHEREAS notification of these proceedings were sent to the parties and there being no appearance on behalf of either parties to this application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this matter is dismissed pursuant to Section 27 of the Act.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael Hargraves

and

Betta Electrical.

No. 432 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

16 May 1996.

Order.

HAVING endeavoured to promote conciliation through conference proceedings set down on the 6th day of May, 1996, but which were not attended by the Applicant but which were attended by the Respondent; and

HAVING relisted the matter for conference on the 16th day of May, 1996 at which the Respondent attended and the Applicant did not; and

HAVING listed the matter for hearing on that date following the conference, the Commission, not receiving any appearance from the Applicant at the hearing, hereby dismisses the matter pursuant to section 27 of the Industrial Relations Act 1979.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Linda Klemm

and

Darg Pty Ltd trading as Balga Medical Centre.

No. 6 of 1996.

COMMISSIONER A.R. BEECH.

23 May 1996.

Reasons for Decision.

THE COMMISSIONER: Mrs Klemm was employed by the Balga Medical Centre from the 20th December 1993 as a medical receptionist and accounts clerk until her dismissal on the 15th December 1995. She complains that her dismissal was unfair.

The case before me proceeded on a quite unusual basis. Mrs Klemm herself gave evidence. However, she then called evidence from the practice manager Ms D'Castro, the head receptionist, and from Dr Miller who is a director of the employer. Their evidence was not helpful to her. In this regard, Mr Peterson was correct in submitting that the fact that their evidence was called by Mrs Klemm herself presents the Commission with some difficulty. In general, a party to proceedings such as is currently before the Commission calls a witness as a person capable of being believed. Further, a party is neither inclined nor permitted to impeach the credibility of his or her own witness. Had Mrs Klemm not been represented by an agent I would have advised her to seek advice on whether she should call them as witnesses. However, in this case, Mrs Klemm was represented by an agent. I asked the agent on three occasions whether or not he intended to pursue his intention to call the practice manager and he replied, in each case, in the affirmative. As a result Mrs Klemm did not call any witnesses who gave evidence favourable to her case. It is open to me to find, and I do find, that the evidence of the practice manager, the head receptionist and Dr Miller was entirely credible and believable. Lest it be thought that this comment is a reflection on the credit of the sole witness called by the respondent, Dr Oehlers, let me immediately state that I was most impressed by Dr Oehlers' evidence and also accept his evidence on the same basis as I have accepted the other evidence that is before the Commission.

Even if that were not the case, I would have no hesitation in accepting the evidence of Ms D'Castro. Her evidence was quite clear and precise, given without hesitation, and was quite credible. Her evidence was supported by the diary which she had kept (exhibit A) and in this regard I accept her evidence where it conflicts with the evidence of Mrs Klemm.

That is not to say that I do not find Mrs Klemm's evidence credible. However the weight of the evidence before the Commission compels me to the conclusion that the events she relies upon to argue that her dismissal was unfair are not necessarily to be seen as she would see them.

The respondent dismissed Mrs Klemm for reasons of repeated errors, lack of productivity, lack of efficiency and a refusal or inability to comply with instructions. There is much evidence to support this contention. Ms D'Castro commenced keeping a diary in May 1995. This was started when Mrs Klemm was given additional hours of work for Mrs Klemm ceasing to work for another medical practice and working solely for the respondent. The diary was not challenged in any serious way as to its accuracy and I accept it. The diary reveals that Mrs Klemm was frequently late for work. Mrs Klemm, in her evidence, stated that she was occasionally late for work but this understates the situation. On the occasions listed in the diary Ms D'Castro told Mrs Klemm on each occasion to explain herself and told Mrs Klemm that her lack of punctuality was not good enough. The evidence does not show that Mrs Klemm took any notice of Ms D'Castro's words to her. The evidence of Mrs Klemm, that in the end she felt she could not keep saying to Ms D'Castro that her alarm failed to go off and that therefore she often did not provide an excuse, confirms my impression in this regard.

In the middle of September 1995 there was a change in the accounting practice at the Balga Medical Centre. One

consequence of this is that accuracy in the banking of monies became crucial. The evidence from Ms D'Castro is that she explained the changes to Mrs Klemm, that she informed Mrs Klemm of the information which would be required of her and even produced a pro forma for Mrs Klemm to use. Ms D'Castro's evidence is that Mrs Klemm appeared to understand the instruction, although Mrs Klemm's evidence in this regard is that she did not. My observations of Ms D'Castro allow me to conclude that Ms D'Castro did properly explain the procedures. I accept her evidence that she gave additional assistance to Mrs Klemm with the pro forma. However a number of errors of a clerical nature occurred in Mrs Klemm's work. This directly affected the payments made to the partners of the medical practice. Ms D'Castro discovered these errors and drew them to Mrs Klemm's attention. However, the evidence before me does not allow me to conclude that there was any improvement by Mrs Klemm, nor any request from her for additional assistance or explanation. Ms D'Castro had to adjust payments in some cases where the error had occurred after payments to the partners had been made. In the three weeks prior to the 8th December 1995 there were errors in each week.

During this period Mrs Klemm was also given a portion of the debtors' list to follow up. The Commission understands that following up the debtors' list had originally been part of Mrs Klemm's duties but that, as no progress had been made by her, the list was broken up and parts of the list were given to Mrs Klemm separately to follow up. The evidence is that no significant improvement was shown in this list. This was drawn to Mrs Klemm's attention.

It was put to Mrs Klemm that her lateness, and the fact that the computer was therefore not turned on at the appropriate time, had a detrimental affect on the employer's operations. She denied this in her evidence and stated that she believed that her unpunctuality was of no significance. However the evidence is contrary to that and I find that the efficiency of the practice was reduced by her unpunctuality. Indeed, this had to be addressed by having a member of the cleaning staff turn on the computer and access certain programmes in order to prepare for the day's operations. I regard this as further proof of the inefficiency and unreliability of Mrs Klemm's employment.

On the 11th December 1995 Ms D'Castro gave Mrs Klemm a letter stating that:

> "After numerous verbal warnings and discussions you have not improved and have therefore forced me to give you this letter as your final warning."

The letter indicated that any further errors would not be acceptable and that all warnings had been exhausted.

The fact remains that a further banking error did occur on the 15th December 1995. This error, together with a letter written by Mrs Klemm to Doctors Oehlers and Miller complaining about "the continual harassment placed upon me by Ms Jeanette D'Castro since I have become pregnant" led to the decision to dismiss.

In my view there is sufficient in the evidence before the Commission as I have outlined above to conclude that there was a valid reason connected both with Mrs Klemm's capacity and the operational requirements of the employer for the dismissal.

Mrs Klemm claims that her dismissal was procedurally unfair in that she did not have sufficient time to show any improvement between the date of Ms D'Castro's letter and her termination on the 15th December 1995. However it is not appropriate in this circumstance merely to look at those four days. The circumstances must be viewed as a whole and there is nothing in the evidence to allow the Commission to conclude that Mrs Klemm was not given a full and fair opportunity of improving. In particular the diary shows that Ms D'Castro frequently warned Mrs Klemm regarding the unsatisfactory nature of her work attendance and performance. I find that those matters about which Ms D'Castro complained have been shown to be fact. There is nothing unfair in the warnings that were given by Ms D'Castro and the letter which constituted the final warning.

The evidence initially before the Commission suggested that Mrs Klemm had received her notice of dismissal whilst absent on sick leave. However, I find as fact that whilst Mrs Klemm was absent on the 15th December 1995 for genuine reasons of illness, she had by then exhausted her sick leave entitlement and was not absent from work on paid sick leave. If she had been, then her dismissal may well have been unlawful (*Reynolds v Swift and Moore Pty Ltd* (1994) 74 WAIG 861) although not necessarily unfair. However I am satisfied from the evidence of Ms D'Castro's diary, which was not contradicted, that Mrs Klemm had exhausted her sick leave and was merely absent from work, albeit because she was ill. I therefore find that Mrs Klemm's dismissal was not unlawful.

Further, and for the reasons I have outlined above, her dismissal was not unfair. There is no evidence before the Commission to permit any finding that Mrs Klemm was harassed or dismissed for an invalid reason or that for any other reason the conduct of the Balga Medical Centre was incorrect. It may well be that Mrs Klemm felt stressed and felt that she was being harassed but I do not find that that in any way reflects upon Ms D'Castro's conduct. The issues outlined above were not caused by the Balga Medical Centre but rather by Mrs Klemm.

I accept that some resentment may have been caused by Ms D'Castro's decision to remove the additional overtime hours. However Ms D'Castro did so because there was no evidence that the work to be done during those hours was being done and I find nothing inherently unfair in the removal of the hours. Whilst the allocation of the additional hours to Mrs Klemm was, in part, to compensate her for the loss of hours at the other medical centre, the removal of those hours merely left Mrs Klemm free to seek further alternate employment if she wished.

For all of the above reasons I find that Mrs Klemm has failed to show that her dismissal was unfair and an order will issue dismissing the application.

Two matters remain. Prior to the proceedings Mrs Klemm issued a Summons to Witness to a Ms Henderson but subsequently decided that she would not be called as a witness. That decision was made after Ms Henderson had left to attend the Commission in response to the summons. Although the summons was discharged by the Commission, it was done on the understanding that the Commission would order that there be liberty to apply for an order in respect of expenses incurred by, or the due of, any person summoned to attend as a witness but who was not called.

At the commencement of the proceedings the Commission issued an order that, in accordance with s.33 of the *Industrial Relations Act 1979* evidence relating to the financial position of the parties would be taken in private. To that end, exhibit A is to be sealed and not be available for public scrutiny. The Commission gives leave pursuant to Regulation 85 of the Commission's Regulations to the respondent to remove from the file exhibit A, no earlier than 21 days after the date of the decision in this matter and provided that no appeal is taken against this decision.

Order accordingly.

Appearances: Mr J.A. Douglas on behalf of the applicant.

Mr D. Peterson (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Linda Klemm

and

Darg Pty Ltd trading as Balga Medical Centre.

No. 6 of 1996.

COMMISSIONER A.R. BEECH.

23 May 1996.

Order.

HAVING heard Mr J.A. Douglas on behalf of the applicant and Mr D. Peterson (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—

(1) THAT the application be dismissed.

(2) THAT there be liberty to apply for an order in respect of expenses incurred by, or the due of, any person summoned to attend as a witness who was not called.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Caroline Marie Korda

and

Murray Heslin Hamilton and Melissa Ann Hamilton T/A Sweet Paradise.

No. 102 of 1996.

COMMISSIONER R.H. GIFFORD.

17 May 1996.

Reasons for Decision.

THE COMMISSIONER : By this application, Miss Caroline M. Korda claimed that she was dismissed in a harsh, oppressive or unfair manner, on 30 December 1995, from her position as a full-time shop assistant with the respondent's business, at Sorrento Quay, which trades as Sweet Paradise, and is otherwise known as Hamilton's Confectionery. The applicant was employed in that position in accordance with the terms of the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.

Leave was allowed at the commencement of proceedings, for Miss Korda's application to be varied, such as to seek, as relief, reinstatement to her former position, or in the alternative, compensation, the terms of which were unspecified.

In the course of the proceedings, the Commission heard evidence from Miss Korda herself together with submissions on her behalf by her father, Mr H.A. Korda, and heard evidence and submissions from Mr Murray Hamilton, the proprietor of, and a partner in, the business.

This evidence in these proceedings revealed that Mr Hamilton and his wife purchased the business, as an existing business, and commenced operating it on 1 December 1995. Miss Korda commenced her employment on that day and was primarily involved in operating the till in the shop, working in conjunction with Mr Hamilton.

It is her recollection that during her period of employment, Mr Hamilton on more than one occasion, referred to the prospect of other shops being opened, with the possibility of her managing one. She felt from these conversations that she was in a secure position.

Mr Hamilton says that after trading for two weeks, he and his wife reviewed the financial status of the business and realised that it was operating at a loss. They decided that the business could not afford to employ Miss Korda, but resolved not to take any action until Christmas had passed. Miss Korda, of course, was not aware of that decision, at that time.

On the Saturday following Christmas, namely on 30 December 1995, Miss Korda says that at one point, Mr Hamilton approached her and said: "I'm going to have to sack you". When she asked the reason, he then stated that: "Since we have opened the shop we have been making no money for ourselves". Miss Korda accepted that advice without challenge but felt surprised in the way in which she was told, yet continued working. Mr Hamilton then entered into a discussion with a security officer from the Quay, but after a short period, realising that Miss Korda was still working, then said, in the presence of the security officer: "You can go now". This Miss Korda did.

Upon returning home and explaining the circumstances of events to her parents, it was recognised that she had not been paid any pay in lieu of notice or any proportionate annual leave. Her father then telephoned Mr Hamilton, but in the brief conversation, there was no clarification of these matters; merely the response from Mr Hamilton, to the effect that it was none of his (her father's) business.

It is Mr Hamilton's evidence that on the day following the dismissal, namely on Sunday, 31 December 1995, he was advised of a casual short-term job being available in his area of expertise, as a heat treatment technician, with a company known as Thermal Test Australia commencing in the first week in January. He says that after learning of this, and deciding to accept it, he realised he would need to be relieved in the shop. Accordingly, he approached the Commonwealth Employment Service, (CES) presumably on Tuesday, 2 January 1996, and requested them to re-advertise the position of shop assistant. He says he did not indicate whether the position was full-time or casual.

He did not make an approach to Miss Korda, in respect of such position.

It is then Miss Korda's evidence that on Wednesday, 3 January 1996, she visited the Commonwealth Employment Service office and was astounded to find the job which she had formerly held, re-advertised.

She says that she returned home and advised her mother, who then telephoned Mr Hamilton to inquire as to his intentions and also took the opportunity of raising with him that no pay in lieu of notice or proportionate annual leave had been paid, that no pay slips had been provided and that no Separation Certificate had been provided. Her mother also made reference to the prospect of making an unfair dismissal claim to the Commission.

Mr Hamilton says he took Miss Korda's mother's reference to an unfair dismissal claim, as constituting a threat. Miss Korda's position is that no threat was intended by her mother's statement.

Mr Hamilton then says that because of this "threat", he perceived that there was the potential for friction between he and Miss Korda, and that it would not have been a suitable arrangement for her to have returned.

Hence, he engaged another person as a shop assistant, but on this occasion as a casual. That employee, whose employment only extended for a short period, was employed for between 14 and 20 hours per week.

In terms of assessing the circumstances of this case, as outlined above, the necessary starting point is to determine whether the onus which is upon the employer in those proceedings, namely in accordance with s.23AA of the Industrial Relations Act, 1979, has been satisfied. This necessitates an assessment as to whether there was justification for the dismissal, in terms of determining whether the dismissal was effected for a "valid reason", which was " ..... based on the operational requirements of the ..... establishment ...."

Mr Hamilton's evidence is, as noted above, that after trading for two weeks, the partners in the business, namely he and his wife, reviewed the financial status of the business, and reached the view that the business was operating at a loss. They recognised that they would have to dispense with Miss Korda's services, and carry out her role themselves.

As to the financial status of the business, Mr Hamilton further relied upon a letter (dated 19 April 1996), from his accounting firm, W. Hicks & Associates, the relevant portion of which stated as follows—

> "The abovenamed clients have purchased the business known as Sweet Paradise, which is trading from leased premises at Sorrento Quay. Due to the size of the shop, restrictions on what can be traded, and the present turnover of the shop, it is unable to support a payroll. At present the shop is suited only to an owner-operator who has sufficient funds available to be able to purchase the stock and plant outright".

Although the letter is dated April 1996, Mr Hamilton gave evidence that the letter refers to the entire period he has operated the shop. This was the only evidence on this question led in these proceedings.

The Commission considers that there are no grounds upon which to doubt this evidence and therefore accepts it. The Commission therefore finds that the termination of Miss Korda directly arose from the business operating at a loss, during the period of her employment. This constitutes in the Commission's view, a valid reason for the effecting of her dismissal.

As to the questions of the dismissal being harsh, oppressive or unfair, it is necessary for the Commission to assess the circumstances of the dismissal, in the context of whether the right to dismiss, as exercised by Mr Hamilton, was abused. Reliance, in this respect, is placed of the authority of the Industrial Appeal Court in Undercliffe Nursing Home *v.* The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous WA Branch (65 WAIG 385).

It is claimed, on Miss Korda's behalf, that she was treated in a harsh or unfair manner by Mr Hamilton by virtue firstly of the manner in which the dismissal was effected and secondly, by the fact that the job which she had held, was re-advertised.

To begin with, the recollection by Miss Korda, as to the statements made by Mr Hamilton at the point of dismissal are accepted by the Commission and the dismissal is viewed in that context. The statement by Mr Hamilton to Miss Korda, that he would have to sack her, so far as it goes, is a statement which, although one based on fact, was made, in the Commission's view, in a relatively short hand and blunt manner. The fact that it was said while she was carrying out her duties, adds to the bluntness of the statement, and also reflects a lack of regard for the applicant's feelings or likely reaction. Especially so, where it was being said to Miss Korda, who was full-time employed, who was a permanent employee and who had even been told, which the Commission accepts, that in the future she might even manage another store. Whilst the shop was only small, for Mr Hamilton not to have taken Miss Korda aside somewhere within that area, to advise her of such a significant event, demonstrates a lack of consideration on his part. Then, after recognising a short while later, that she was still working, and to tell her in the presence of a stranger, that she could "go now", is particularly off-hand, in the context of the discussion that had just been held.

The question becomes however, whether lack of sensitivity or consideration or acting in an off-hand manner, collectively reflects harshness or unfairness, sufficient to warrant the Commission's intervention.

In this case, from a review of all of the evidence the Commission does not consider that it does, although there is no doubt that the manner in which the termination was effected can be criticised. It does need to be acknowledged that Mr Hamilton had just become an employer for the first time, and thus had no experience to work upon. The simple test of treating one's employees in the manner in which one would be expected to be treated oneself, may well have been availing for Mr Hamilton.

The fact that Mr Hamilton was new to the status as an employer, was reflected in the fact that Miss Korda, during the period of her employment, never received any pay slips, and that he failed at the point of dismissal to make payment of appropriate pay in lieu of notice or pro-rata annual leave and failed to provide a Separation Certificate. All of these matters, however, were rectified in one way or another prior to these proceedings being conducted, and do not need to be addressed by the Commission.

The next question for consideration concerning the claim of harsh or unfair treatment relates to whether Mr Hamilton, subsequent to effecting termination of Miss Korda's employment, simply re-advertised the same position, with a view to engaging someone else. To begin with, his evidence suggests that the dismissal was made with a view to he taking over the role formerly carried out by Miss Korda. He did not actually say that in his evidence, but it is a reasonable inference for the Commission to draw from the evidence. In the end however, it means that at that point he had no intention to replace her.

His evidence then is that the position changed a day later, when he learnt of an opportunity for him to gain some casual employment in his field of expertise and in deciding to take it up, realised that he would need to be relieved in his own business. The Commission accepts his evidence in this respect.

He then says that notwithstanding that his intention was to engage a shop assistant on a casual basis to relieve him, he only advised the CES of the position he sought to fill, and not that it was to be on a casual basis.

The Commission views this with a little scepticism, especially when the evidence of Miss Korda (which is accepted) is that the position was advertised in the "full-time" section at the CES office. Was this a case of Mr Hamilton actually intending to replace the full-time position or was it a case of Mr Hamilton's cursory manner in dealing with the CES?

Upon consideration, the Commission puts it down to the latter. Subsequent developments reveal that he did in fact engage a shop assistant on a casual basis and employed that person for hours which were much less than that for full-time employment, namely in this case, between 14 and 20 hours per week. This serves to confirm that it was not his intention to engage a full-time shop assistant as a relief.

It does not seem to provide an explanation as to why he did not see fit to at least explore with Miss Korda as to whether she had any interest in engagement on a new basis, namely as a casual, on a lesser number of hours per week. The explanation he relies upon is that he had a concern about approaching Miss Korda because of the potential for friction generated by the alleged "threat" made by Miss Korda's mother. This event however, was later than his decision to re-advertise. Hence the Commission's scepticism. The Commission in any event, does not consider the statement made by Miss Korda's mother to have constituted a threat.

At the same time it may be said that there is an implication here, namely that had Miss Korda's mother not made contact with Mr Hamilton, and left it to Miss Korda alone, there may have been a willingness on Mr Hamilton's part to consider offering Miss Korda the new basis of engagement. No one knows the answer to this proposition however. All it perhaps serves to illustrate is that whilst there can be no denial that parents do and should advise their children on matters relating to their employment, there is the risk that representation on a child's behalf, may well involve a response from an employer that such employer would choose to deal directly with the employee.

In the end, and from a careful consideration of the evidence, the Commission considers that there is not sufficient evidence to conclude that Mr Hamilton re-advertised the position through CES, as a means of replacing Miss Korda in the position she formerly held, by another employee. It was not her position, ultimately, that was re-advertised.

It is therefore not open, from a consideration of all of the circumstances relating to and arising from the dismissal, to conclude that Mr Hamilton's actions were harsh or unfair.

Such an outcome is not to be taken as the Commission's endorsement of the absolute fairness of the process of effecting the dismissal and of the subsequent events. The Commission finds that there was insensitivity, lack of consideration, together with action in a cursory manner, demonstrated across the whole process, but not sufficient to deem it harsh or unfair, in the context of the test cited above.

This having been concluded there is then no other option open to the Commission than to dismiss the application. The Commission will accordingly issue an Order to that effect.

Appearances: Mr H.A. Korda on behalf of the Applicant.

Mr M.H. Hamilton on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Caroline Marie Korda

and

Murray Heslin Hamilton and Melissa Ann Hamilton T/A Sweet Paradise.

No. 102 of 1996.

COMMISSIONER R.H. GIFFORD.

17 May 1996.

Order.

HAVING heard Mr H.A. Korda on behalf of the Applicant and Mr M.H. Hamilton 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 dismissed.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Editor's Note: Resulting from an incorrect publication, the Reasons for decision and order printed at 75 WAIG 3068 is correctly reprinted below.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Joseph Moreno

and

Serco (Australia) Pty Limited.

No. 542 of 1995.

COMMISSIONER R.H. GIFFORD.

27 October 1995.

Reasons for Decision.

THE COMMISSIONER : By this application, Mr John Joseph Moreno, alleges, in accordance with s.29(1)(b) of the Industrial Relations Act, 1979 ("the Act"), that he was dismissed in a harsh, oppressive or unfair manner. Relief, in the form of reinstatement to his former position, is sought.

Mr Moreno had been employed as a casual Storeperson/Picker with Serco (Australia) Pty Limited, with effect from 3 January 1995. At that date, the company had commenced operations as a contractor to the Western Australian Government, having secured a contract to assume responsibility for certain services formerly carried out by the Department, Supply West. Mr Moreno had been initially engaged with Supply West, in the same capacity, in November 1994. When Serco assumed control, he was offered and accepted a similar role.

Mr Moreno claims that his services were terminated by the company's Contracts Manager, Mr Fitzgerald, on Friday, 5 May 1995. The company denies this position and claims, in turn, that Mr Moreno resigned his services on that day.

This is a threshold position of course, since if the Commission were to determine in the company's favour in this respect, the application could not succeed, because the unfairness alleged under s.29(l)(b) of the Act, is upon the pretext that a termination (viz. dismissed) was effected by the company.

There is a further threshold question to be dealt with as well. It concerns the status of Mr Moreno's casual employment. He claims that, notwithstanding his engagement as a 'casual', he considered his position to be a permanent one. The company, on the other hand, claims that his employment was, at engagement, as a casual, and always remained, as a casual. This being the case, his engagement was on an "as required" basis, and was only subject to the termination requirement of the relevant award, being the Shop and Warehouse (Wholesale and Retail Establishments) State Award (No. R 32 of 1976) ("the Award"), of one hour's notice. There was no reasonable expectation of ongoing employment, in their view.

If the company's position is upheld in this respect, and there was no ongoing employment, there would appear to be no scope in the circumstances, for the Commission to again deal with the unfairness as alleged.

It is necessary for both of these threshold questions to be determined at the outset.

Termination

The evidence of the Contracts Manager, Mr Fitzgerald, was that a number of casuals were engaged on 17 April 1995, in an endeavour to deal with a backlog of orders for schools, during the course of the school holidays. Some 18 of these were terminated on 30 April 1995, followed by a further 5 on Wednesday, 3 May 1995. At this stage, it was his expectation that a further 5 would be terminated on Friday, 5 May 1995.

Mr Moreno, by his evidence, indicated that he was aware of the 5 casuals to be terminated on Friday, 5 May 1995, but understood that this would leave 2 casuals remaining in employment. The belief of the 2 casuals remaining was not a belief held by Mr Fitzgerald.

By Thursday, 4 May 1995, Mr Fitzgerald had concluded that the 5 casuals in question did not need to be terminated until during the following week and advised the Stores Supervisor, Mr Ron Williams to that effect.

Mr Moreno recalled that at 8.00 am on Friday, 5 May 1995, Mr Williams approached him and advised that he would be 'staying' with the company, and in other words, was not one of those who were being terminated. Mr Williams' recollection of this statement was somewhat contradictory, although he admitted that he did not know how long Mr Moreno would be staying with the company.

Mr Moreno says that he felt relieved when he received Mr Williams' advice, as he was aware of the feeling of insecurity around the warehouse.

By this exchange, did Mr Moreno receive any forewarning of his imminent termination? The Commission believes he did not.

Continuing the events on the Friday, at 11.15 am, Mr Moreno was approached by Mr Stan Littler, the Leading Hand in charge of the Receipts Section, asked him how he would feel taking up a permanent position as an Inventory Goods Clerk. Mr Moreno indicated he would be pleased to take such a position and now claims that he accepted the position.

The other evidence led in respect of this matter differs. Mr Fitzgerald indicated that on the Friday, he discussed the possibility of such a position with Mr Littler and advised him the type of person who would fit the role. He was prepared for Mr Littler to investigate whether there was any interest among existing staff for the position.

Mr Littler, in his evidence, indicated that his approach to Mr Moreno was on the basis of determining his interest, and that was all. He had no authority to formally offer such a position to him. He says that Mr Moreno's response was that he would 'like to have a go'.

The Commission finds that Mr Littler was doing no more than 'sounding out' Mr Moreno for the position. There was no formal offer. The Commission does actually find it surprising that Mr Moreno felt that an offer had been made, when from his quite extensive previous employment experience in the retail sector, that he would have been unable to draw the distinction between the 'sounding out' concerning a position and the formal offer of a position, especially in this case, from the leading hand and not the Supervisor in charge of the section.

This incident was followed, according to Mr Moreno's evidence, by the one which led to the termination of his employment. At 11.30 am, he was approached by Mr Fitzgerald, who asked him whether anyone had seen him about when he would be 'finishing up'. Mr Moreno questioned as to what he meant by that, to which Mr Fitzgerald responded that he would be finishing up 'one day next week'. Mr Fitzgerald then proceeded elsewhere. Mr Moreno indicated that he was shocked and then soon after felt very annoyed.

Mr Fitzgerald's evidence of that discussion is in fairly similar terms.

Mr Moreno after about 15 minutes then arranged for Mr Williams and Mr Littler to accompany him to Mr Fitzgerald's office. The meeting, which commenced about 11.30 am, took place in the computer room adjoining Mr Fitzgerald's office. Mr Moreno asked Mr Fitzgerald for an explanation of his action. Although he admitted that both he and Mr Fitzgerald were talking over one another, he recalled some of what was put by him; in particular that he had been painted the Serco 'family' picture, that he had accepted the task he had chosen to do, that he had done his part of the bargain and that he had always had a good working relationship. He said he couldn't understand how Mr Fitzgerald could be so unprofessional and so hard.

He recalled the response from Mr Fitzgerald to the effect that he was under instruction from the Sydney office to 'get rid of all casuals', and that the matter was out of his hands.

Mr Moreno then indicated to Mr Fitzgerald that he could not accept the ending of the relationship between he and the company on the basis that he leave one day next week. Mr Fitzgerald's response which he recalls was: "If you're not happy with that, you can go now!" Later in his evidence though, his recollection of the statement was: "If that's how you feel, you can leave now!"

Mr Moreno then left the meeting, went to the warehouse to advise colleagues he was leaving, spoke to the Administration Manager, and then, just after 12:00 noon, left the premises.

Mr Fitzgerald's recollection of events was that at about 11.30 am, Mr Moreno approached him at his office, accompanied by Mr Williams and Mr Littler, in an annoyed and angry manner, and uttered expletives to him at the outset. The meeting moved to the computer room. Mr Moreno stated that he had been told three different pieces of information the same day; that he had a wife and child to feed and that Mr Fitzgerald was getting rid of all the good workers.

The conversation then became heated and tempers flared.

Mr Fitzgerald recalled explaining to Mr Moreno that casuals, such as he, were brought in on an "as required" basis. The discussion came to an end with him stating that the work load had eased off, and that he was under mounting pressure to bring the contract into budget. He didn't recall making any reference to a direction from Sydney.

In response to Mr Moreno's statement concerning his rejection of the basis upon which he was to leave, Mr Fitzgerald recalled Mr Moreno actually saying that he would prefer to leave, to which Mr Fitzgerald responded: "On the basis of that: I accept".

Mr Williams did not have a detailed recollection of the discussion. He recalled that Mr Moreno had said at the outset that he had been told two (not three) different things that day. A heated argument then developed. Mr Moreno then said that he may as well leave; and proceeded to walk out. He felt Mr Moreno was under pressure when he said it.

Mr Littler recalls the discussion commencing with Mr Moreno questioning as to what was happening, in light of the comments received from each of the three. The discussion then got heated with Mr Moreno stating that Mr Fitzgerald was no good as a Manager and that he let good workers go and kept poor workers on. Mr Moreno had then said he could not work under those conditions and would rather leave, to which Mr Fitzgerald replied: "Well, as to what you just said, I agree".

The recollection of each of the participants in the discussion differs to a degree, and can probably be best explained by the heated nature of nearly all of the discussions. There is no doubt that it was the existence of Mr Moreno's annoyance at the time that generated the heated discussions. In view of the nature of the information conveyed to him in the course of that morning, the Commission can understand how annoyance resulted. But the generation of an argument is another matter.

The context of the whole discussion is that Mr Moreno had been advised that his services would be terminated at a point the following week. The advice did not constitute formal notice to terminate but rather the foreshadowing of an intention to terminate. Whatever its status, however, the intention was clear: Mr Moreno, a casual employee, was to be terminated, during the course of the next week.

It was Mr Moreno who sought to revisit the question, by indicating he could not accept the employment ending in the manner proposed; that is, by leaving on a day the following week. He wanted the clarification. In the end however, it becomes a case of the Commission determining whose recollection of the statement at the conclusion of the discussion, is to be preferred. Is it to be the statement in response by Mr Fitzgerald as recollected by Mr Moreno of :"If that's how you feel, you can leave now!"; or is it to be that recollected by Mr Fitzgerald of: "On the basis of that (viz., preferring to leave); I accept!". Of the two Supervisors, only one, Mr Littler, has a recollection of Mr Fitzgerald's statement. His version was in similar, although not identical, terms to that of Mr Fitzgerald.

In terms of the Commission preferring one version over another, it is important that Mr Fitzgerald's statement be put in the proper context, namely as a response to Mr Moreno's statement that he could not accept ending the relationship on the basis proposed by Mr Fitzgerald, that is, on a day the following week. This much is clear. Then it is a case of determining whether Mr Moreno went on to say that if that is to be the basis, he would prefer to leave. Even if the Commission accepts Mr Fitzgerald's version that this was said, and then accepts his version of the response, all this must be put in the wider context of his statement earlier that day, foreshadowing termination the following week.

This having been said, the Commission finds that Mr Fitzgerald's version is to be preferred, particularly because of the supporting evidence of Mr Littler. The statement by Mr Moreno, of preferring to leave, however, was not a statement confirming an intention to leave, but merely an indication of an option that was open to him. Mr Fitzgerald's statement in response was the confirmation; that is, finishing with the words that he accepted Mr Moreno leaving then and there. It was the confirmation of the foreshadowed advice given earlier in the day. Such an interpretation, it is open to say, concurs at least with the sentiment felt by Mr Moreno, in terms of his recollection of the actual words used.

The Commission accordingly finds that Mr Fitzgerald by his statement to Mr Moreno in the computer room, on Friday 5 May 1995, effected the termination of his employment.

Casual Status

It is Mr Moreno's position that, notwithstanding his engagement as a 'casual', he was engaged in a permanent position.

The letter from the company, dated 21 December 1994, confirming his employment as a Storeperson on the Supply West Contract, expressly sets out his employment status:

> viz. " you will be employed as a casual employee" (Ex. C1).

A replacement letter, issued to include reference to a matter omitted from the first, concerning an unrelated issue, in January 1995, contained the same provision (Ex. C2).

Amongst the General Terms and Conditions specified as an attachment to the letter is Clause 2, headed 'Nature of Duties', the first two paragraphs of which state:

> "It is expected you will devote your time and attention to the faithful and diligent performance of your duties and endeavour to the utmost of your ability to promote the interests of the Company.
>
> You shall not at any time during your employment, engage directly or indirectly in other employment or business without first having obtained written approval from the Contract Manager. In this regard, approval will not be unreasonably withheld unless there is a conflict of interest."

Although the replacement letter of engagement did not make any express reference to an award, there was a clear understanding, not disputed in these proceedings, that Mr Moreno was employed under the Shop and Warehouse (Wholesale and Retail Establishments) State Award (No. R 32 of 1976).

Subclause (1) of Clause 7.—Casual Workers of that Award, states as follows:

> "(1) "Casual Worker" shall mean a worker engaged by the hour and who may be dismissed or leave the

> employer's service at any moment without notice and except as hereinafter provided shall not be engaged for more than 30 hours per week in ordinary hours.
>
> Notwithstanding the aforementioned a casual worker may be engaged in ordinary hours for 38 hours per week for periods not in excess of 4 consecutive weeks ....."

As to whether this definition confirms Mr Moreno's engagement as a casual employee, is a matter of disagreement between the parties. Mr Crossley, on behalf of Mr Moreno, argued that because Mr Moreno regularly worked 38 ordinary hours, together with some overtime hours, being a form of employment that did not conform with the requirements of the Award definition, there were doubts as to whether he was a bone fide casual employee. It was therefore open to argue that he was engaged on a permanent basis; although he was clearly paid as if he was a casual.

Mr Kennedy (of Counsel), on behalf of the respondent company, argued that Mr Moreno was employed as a casual, and that such basis of employment never changed. He conceded that the circumstances of his employment, namely the working of 38 ordinary hours regularly, was not in conformity with the requirements of the definition. All that could be alleged, however, is that the Award had been breached. On the other hand, because there was no deeming provision in the definition, there was no scope for Mr Moreno to be deemed to be a permanent employee.

There is no doubt that, in the context of the Award, Mr Moreno's engagement was characterised by ambivalence. He worked regularly 38 ordinary hours, together with a level of overtime, in the manner in which a full-time employee under the Award might work. Yet, he was engaged as a casual, and continued to be so described and was clearly paid as a casual. Further, the basis of that engagement did not confirm with the requirements of the 'Casual Worker' definition under the Award. Whilst these proceedings do not need to decide the question of whether the Award was breached or not by the company's action, it would appear on its face that this may have resulted. This is not something that would knowingly have occurred; the company being new to awards of this State in January of this year.

Whether a deeming clause is an essential prerequisite to Mr Moreno being able to be classified as a permanent full-time employee, is not a matter as clear-cut as it may seem. It may be open to argue that because the circumstances of his employment do not meet the requirements of the 'Casual Worker' definition, he is not, for the purposes of the Award, a casual. Not being a part-time employee, it could be argued that he can only therefore be a full-time employee, and engaged on a permanent basis.

The Commission can determine that question of course in interpretation proceedings, but it needs to be considered whether it is necessary for such to occur. In this respect the Commission is cognisant of the fact that in the end, an assessment has to be made as to whether Mr Moreno, in terms of the totality of his employment relationship with the company, was a bone fide casual employee, having no ongoing such relationship.

For a detailed consideration of this question, the Commission refers to a decision of Fielding C. in Philip Thomas Squirrell *v.* Bibra Lakes Adventure World Pty Limited trading as Adventure World (64 WAIG 1834). In dealing with an employee's status as a casual, the Commissioner stated at p.1836, as follows:

> "Whatever might have been meant by the label 'casual' on this occasion, the true nature of the relationship between the parties is that which is evidenced by all the dealings between them. That they may choose to call it one of casual employment, as I am satisfied they did, is but one of the factors to be taken into account in the circumstances of the present claim. The parties cannot, by use of a label, make the nature of the relationship something different to what it in fact is. In this respect, it is helpful to record the observations of Haese D.P., with whom Layton and Russell D.P.P. agree, in Port Noarlunga Hotel *v.* Stewart (supra) (South Australian Full Industrial Court. Print I24/1981; 26 March 1981) at p.5-6—
>
> > 'In attempting to define on the evidence of any case whether there was one contract of service or many such contracts, it is important to keep firmly in proper perspective the classifying name attached to any given worker and mutually accepted by the parties, whether the source of such name is a relevant award or otherwise. Such name may be of some assistance. So also may be the provisions of the relevant award. But they are only indicia of the nature of the contract along with all other relevant facts. They are not, taken alone, in any sense determinative of the nature of the contract.' "

and later, the Commissioner stated, at p.1837:

> "..... In Port Noarlunga Hotel *v.* Steward (supra), an employee who was classified as a 'casual barmaid', once rostered for work was expected to work, she consulted her employer before taking time off, her roster was rarely altered, and she normally worked out the full time of the roster. In those circumstances, she was thought by the Full Bench of the South Australian Industrial Court to be working under a single ongoing contract for the employee to work flexible hours as required by the employer."

In applying this authority, the analysis comes down to a consideration of all of the factors which impact upon the nature of the employment relationship between the parties.

The letter of engagement, whilst on its face, unequivocal in terms of its reference to casual status, then contains provisions that would not typically apply in a casual employment situation. Further, the position, as it relates to the application of the award, is not a clear cut one, when regard is had to the issues already highlighted.

What other factors are there? To begin with Mr Moreno says that he believed he was permanently employed and had formed the assumption that he had the prospect of a long and rewarding career with Serco. This had been obtained from the initial interview for the job, at which he was engaged. He says he was advised by Mr Fitzgerald, the Contracts Manager, and Mr Giddings, the Acting Contracts Manager, that he had a career opportunity with Serco. Both had complemented him upon his professionalism and experience. He was told that Serco had big plans for Western Australia, and that a person of his calibre would go a long way. Further, the company, after engaging him on a casual basis, advised him that they would be engaging additional permanent employees and additional supervisory employees, where there may be opportunities for him.

In a later interview with Mr Fitzgerald, he was told that he had a good future with Serco and was in a good position for future promotions. The purpose of that interview was to review whether he ought to take up a permanent position he had been offered outside the company. As a result of what he was told, he declined the offer.

Against this, Mr Fitzgerald, whilst recollecting that at Mr Moreno's recruitment he would have indicated the opportunities that would be available, says that he did not give any promises and nor did he give any undertaking relating to a long and fruitful career. As it turned out, Mr Moreno was unsuccessful for an Assistant Supervisor's position in March 1995 and also for a permanent Storeperson's position, in April 1995.

In assessing whose recollection to prefer in these circumstances, it is necessary to take into account the possibility that Mr Moreno may have drawn exaggerated conclusions from what was actually stated to him by Mr Fitzgerald. In this sense, it is to be appreciated that Mr Moreno has had extensive work experience in related occupations. In his 6 years experience with K-Mart, he was Head of Department in many areas of the store and presumably had staff reporting to him; and at Aherns over a 3 year period, he held a position of Sales Manager in a number of departments. His other experience extended to insurance and the postal service. He does not convey the impression of someone given to gullibility, nor of someone who has an unrealistic impression of his own capabilities, although there is no doubt he had a confident belief in what he could and can achieve.

Against this Mr Fitzgerald reflected no signs as a person who would misrepresent. He was clear thinking and articulate, and gave the appearance of a good manager of people.

It is to be recognised on the other hand that Mr Fitzgerald was responsible for engaging a whole workforce in January 1995 and would obviously had conducted a number of interviews.

On balance, the Commission prefers Mr Moreno's recollection of the interviews. It is further open for the Commission to make the observation that although none of the statements made on behalf of the company constituted undertakings of any kind, they are nevertheless not statements typically made upon the engagement of a true or bona fide casual.

At the point of termination, it was quite clear, in the company's mind, what the status of the employment was. Mr Fitzgerald, during the early part of the discussion with Mr Moreno in the computer room made it plain that casuals with the company were employed on an 'as required' basis. That in fact is an apt description of the traditional notion of casual engagement.

Was Mr Moreno's engagement on an 'as required' basis? The Commission does not believe so. The Commission believes that, whilst the engagement was clearly as a casual, it was also on an ongoing basis, subject of course to the notice of termination provisions contained in the Award, namely one hour's notice, exercisable by either party. Other casuals, especially those engaged by the company in mid April 1995 may well have been engaged on an 'as required' basis, but that was not the characteristic of Mr Moreno's employment.

The fact that the engagement was ongoing, having regard to the authorities referred to above, necessarily must be satisfied to enable a challenge against the fairness of a termination, to be pursued. It follows therefore, in Mr Moreno's case, that there is no bar, based upon the status of his engagement, to this matter proceeding to the point of allowing an assessment of the fairness of the company's action to be made.

Fairness of Termination

Mr Crossley, on behalf of Mr Moreno, argued in essence that the actions by the company in terminating his employment, on 5 May 1995, were harsh, oppressive or unfair, by virtue of no reason for the termination being given and no prior forewarning of impending termination being given. On the consideration of the evidence to date the Commission has already found that such forewarning of impending termination was not received from his Supervisor, Mr Williams.

Mr Williams in fact indicated early on Friday 5 May 1995, that he was not one of those who were being terminated and indeed was not aware as to how long Mr Moreno would be staying with the company. Yet, at 11.30 am that same day, Mr Moreno received a contrary message from Mr Fitzgerald, namely that he would be finishing up one day the following week. Mr Moreno's response was to feel shocked and soon after, annoyed.

In between this he was 'sounded out' over a permanent position as an Inventory Goods Clerk.

The picture that unfolds as the Commission sees the nature of events is one of a series of conflicting messages. The Supervisor conveyed the impression of ongoing employment. A Leading Hand from the Receipts Section foreshadowed the prospect of another ongoing position available to him. Yet the Contracts Manager foreshadowed termination the following week. This all occurred on the one morning.

Mr Kennedy (of Counsel), on behalf of the company submitted, in the alternative to the submission that Mr Moreno has resigned, that the termination was not harsh, oppressive or unfair. To begin with, there was a valid reason for the company's action, namely lack of work . In such a circumstance of declining work, the company, in terms of the efficient management of the operation, was obliged to terminate the casuals; the 'shock troups' of the organisation. For Mr Fitzgerald to advise Mr Moreno that he would not be required beyond one day the following week could not be seen as unfair, in a context of where work was declining and he was a casual.

What is the position in relation to a reason being given for the termination? It is certainly the case that when termination was foreshadowed by Mr Fitzgerald on 5 May 1995, that no reason at all was given. Somewhat ironically, it was Mr Moreno's insistance upon knowing such a reason that led to the meeting in the computer room, and an answer being given.

In the course of the discussion or interchange between Mr Moreno and Mr Fitzgerald in the computer room there was reference to the fact that Mr Fitzgerald was under instructions from the Sydney office to 'get rid of all casuals' and that the matter was out of his hands. This was the recollection of Mr Moreno. Mr Fitzgerald, on the other hand, had no recollection of that statement. However, Mr Fitzgerald did recall stating that the level of work had eased off, although there was sufficient work for the remaining casuals until one day the following week. He also recalled admitting that he had been under mounting pressure to bring the contract into budget.

Mr Moreno conceded that Mr Fitzgerald may have referred to the fact that the level of work had eased up. He contested the fact, however, that this had been the case; certainly in his own experience, it had not been the case.

From a consideration of this evidence, the question the Commission has to address is whether the company has satisfied the onus which is now applicable (s.23AA(l) of the Act) of demonstrating that the termination (viz. dismissal) was justified. This justification is measured according to whether there was a valid reason for the termination relating to Mr Moreno's 'capacity or conduct' or based upon 'operational requirements'.

At the point of termination, there was nothing raised by Mr Fitzgerald relating to either his capacity or his conduct. Was there any reference to operational requirements?

From a consideration of the evidence above, there would appear to be sufficient evidence to conclude that Mr Moreno was told that the level of work was 'easing up'. Mr Moreno of course would not have been told that, had he not insisted upon an explanation; so, in the context of these proceedings, it was fortuitous for the company that he did. Certainly, he contested the fact that work was 'easing up', but that was based upon his own experience. The Contracts Manager is naturally the best person to make that assessment.

It accordingly follows that the reference by Mr Fitzgerald to the 'easing up' of work, does fit the description of the term 'operational requirements' as used in the Act. It thus follows that a valid reason was given, and the onus of s.23AA(1) of the Act, is satisfied.

The onus to demonstrate that the termination was harsh, oppressive or unfair of course, rests with Mr Moreno.

Reference has already been made to what the Commission believed to be conflicting messages that Mr Moreno received from 3 different persons in authority, prior to the meeting in the computer room. Were these actions symptomatic of a wider confusion?

In focusing upon the interchange between Mr Moreno and Mr Fitzgerald at the meeting in the computer room, there is still the outstanding question of whether an indication was given that all casuals would be dispensed with. The respective recollections of either of the two, were not supported one way or another by the two Supervisors present. Neither of their recollections extended to the question of dispensing with casuals. Whilst it was the case that the interchange was heated, and such a circumstance can effect recollections, the Commission is prepared to accept Mr Moreno's recollection of Mr Fitzgerald's statement to this effect. The Commission is satisfied that during the interchange, Mr Moreno, who after all was demanding an explanation, would have listened with some attention to the answer to his own important question.

In finding that Mr Fitzgerald did make the statement that he was under instructions from the Sydney office to 'get rid of all casuals', it may be observed that such statement fits entirely consistently with the statement he did recall making, namely that he was under mounting pressure to bring the contract into budget.

What did the statement 'get rid of all casuals' mean? The only explanation in the evidence, namely from that of Mr Fitzgerald himself, was that the 'casuals were on an as required basis'. This is the essence of the matter. Mr Fitzgerald was treating all casuals as having been engaged on an 'as required' basis. He was treating Mr Moreno, as fitting that description.

This Commission has already found that this was not the basis of his employment.

The fact that Mr Fitzgerald, acting on advice from Sydney, did not draw the distinction between Mr Moreno and the 'as required' casuals, is, in the Commission's view, where unfairness arose.

In so concluding, the Commission is not implying that Serco, as the employer, cannot exercise its right to terminate employees, especially bone fide casuals, or make them redundant, on account of a decline in the level of work. That right is always there, and will remain. The Commission is obliged to consider whether there has been any unfairness in the exercising of that right, and that is all.

The unfairness referred to, was, in the Commission's view, further compounded when regard is had to the lead up to the meeting in the computer room, namely the conflicting messages Mr Moreno received from the 3 persons in authority. Without seeking to explore how this came about, whether it was inadequate communication, or misunderstanding as to Mr Moreno's status, its effect was quite devastating upon Mr Moreno. Hence the Commission's understanding of Mr Moreno's annoyance, and desire for clarification.

The Commission therefore concludes that Mr Moreno was terminated in an unfair manner, such as to satisfy the requirements of s.29(1)(b)(i) of the Act.

Relief

Mr Moreno seeks reinstatement into his former position. He is confident that he had a satisfactory relationship with Mr Fitzgerald and believes that such relationship could continue. He is also confident that his relationship with Mr Williams would be as good as ever.

Mr Fitzgerald, on the other hand, indicates that reinstatement would create a significant problem for him, due in particular to the fact that there had now been a breakdown in trust between he and Mr Moreno. Mr Williams however, indicated that he could work with him again.

Under s.23AA of the Act, the Commission has a discretion to order reinstatement, or re-employment. Whilst having found in Mr Moreno's favour, in terms of unfairness, the Commission does not necessarily find in his favour in every respect. The Commission refers here to the heated argument that took place between Mr Moreno and Mr Fitzgerald, in the computer room on 5 May 1995. There is no doubt that the heated nature of the argument was instigated by Mr Moreno. Certainly, he was very annoyed, going into that meeting. But, at the outset of the meeting, he made remarks to Mr Fitzgerald, which went directly to management decision making, solely within the province of Mr Fitzgerald. He told him in particular that he was no good as a Manager and that he was getting rid of all the good employees. The statement was apparently preceded with the use of expletives.

Whilst the Commission understands the reason behind Mr Moreno's annoyance, and the appropriateness in him seeking an explanation of the company's action, this does not excuse his action in generating the argument. The fact that Mr Fitzgerald then participated in the argument is seen as a countervailing factor, however.

In the end, the Commission believes Mr Moreno's actions, in generating the argument, especially in light of his background of considerable employment experience, was inappropriate. The Commission is not prepared to reinstate, but rather prepared to order re-employment, to the position formerly held.

The Commission is satisfied that there is sufficient scope for a proper working relationship to be re-established. This is especially the case with his Supervisor, but also with Mr Fitzgerald. Mr Moreno certainly possesses the maturity and confidence in himself to make it work. Mr Fitzgerald gives all the impression, notwithstanding his reservation, of possessing the professional management attributes to make it work from his standpoint.

The Order can only refer, as indicated, to the former position, namely that as a casual Storeperson/Picker engaged on a ongoing basis; and not as an 'as required' casual. Whether this can lead ultimately to a permanent position, is a discretionary matter for the company, and will be dependant upon a permanent position becoming available within the company in the future, subject of course to Mr Moreno satisfying the criteria for such a position.

A Minute of Proposed Order reflecting the outcome of this matter will now issue.

Appearances: Mr T. Crossley on behalf of the Applicant.

Mr J. Kennedy (of Counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Joseph Moreno

and

Serco (Australia) Pty Limited.

No. 542 of 1995.

COMMISSIONER R.H. GIFFORD.

6 November 1995.

Order.

HAVING heard Mr T. Crossley on behalf of the Applicant and Mr J. Kennedy (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

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 on-going basis.
2. THAT such offer be made within 7 days of the date hereof.

(Sgd.) R. H. GIFFORD,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sara Muir

and

John Lawrie trading as
Kelmscott Real Estate.

No. 1380 of 1995.

COMMISSIONER C.B. PARKS.

30 May 1996.

Order.

HAVING heard Ms S. Muir on behalf of the Applicant and Mr J. Lawrie on behalf of the Respondent;

AND WHEREAS the applicant made oral application to the Commission that the hearing of the above cited matter, commenced on the 22nd day of May 1996, be adjourned and further that the respondent be ordered to produce, to her, employment records material to her substantive application, being records which the applicant has previously requested be produced for inspection, and which have not been produced to the applicant by the respondent;

NOW THEREFORE the Commission being satisfied that it is necessary for a just hearing and determination of application No. 1380 of 1995 and pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. THAT the hearing of application No.1380 of 1995 be and is hereby adjourned to a date to be fixed; and
2. THAT John Lawrie shall, within 14 days from the date of this order, provide to Sara Muir a copy of

any book, paper or other document in his possession or control which contains a record of-

(a) the wages/commissions paid to Sara Muir in relation to the months of April, May and June 1995; and

(b) the advertising and related expenditure incurred by Sara Muir in relation to the months of May and June 1995.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Charlotte Paddock

and

Ross John Goldstein trading as Mergers and Acquisitions.

No. 94 of 1996.

COMMISSIONER A.R. BEECH.

17 May 1996.

Order.

WHEREAS an application was lodged in the Commission for an Order pursuant to section 29 (1) (b) of the Industrial Relations Act, 1979;

AND WHEREAS the applicant and respondent subsequently advised the Commission that the matter had been settled;

AND WHEREAS the applicant filed a Notice of Discontinuance of the application on 6 May 1996;

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.

Eric John Poat

and

Eagle Communications Pty Ltd.

No. 899 of 1995.

COMMISSIONER A.R. BEECH.

27 May 1996.

Reasons for Decision.

THE COMMISSIONER: Mr Poat was employed by Eagle Communications Pty Ltd between the 5th December 1994 and either the 2nd or 3rd August 1995 as a technician/installer. He claims that he has been unfairly dismissed and that he has also been denied benefits under his employment contract. Mr Poat represented himself during the hearing and the respondent company was represented by its managing director, Mr Wallace.

It is apparent to the Commission that both Mr Poat and Mr Wallace have had a past close relationship. Prior to his employment Mr Poat and his family lived in Darwin. The evidence is that both Mr Poat and Mr Wallace (or the respondent company) had joint business dealings in Darwin with a third party. Eagle Communications Pty Ltd also had business dealings with Mr Poat. Both Mr Wallace and Mr Poat have been the joint owners of a trading name "Stormsat" since apparently February 1994. Mr Wallace invited Mr Poat to come to Perth to work for him. This was done. There is some evidence of Mr Poat and his family visiting Mr Wallace and his family socially. During the course of the employment relationship Mr Wallace occasionally, perhaps even frequently, asked Mrs Poat to run errands for the company. Further, and significantly, shortly after he was employed, Mr Poat was made a signatory to Eagle Communications Pty Ltd's cheque account.

Now, however, there has been an acrimonious falling out of that relationship. Mr Wallace states that he dismissed Mr Poat for gross misconduct. He states that in approximately mid-July 1995 he became aware of Mr Poat "ripping us off". He accuses Mr Poat of cashing cheques and either keeping all or some of the money. He accuses Mr Poat of keeping part of cash payments given to him by customers for work performed. He accuses Mr Poat of ordering a book, worth $378.00, on the company's account but sent to Mr Poat's home address. He accuses Mr Poat of poor workmanship.

Mr Poat accuses Mr Wallace of having dismissed him unlawfully and unfairly. Mr Poat refers to their previous business dealings and states that Mr Wallace owes him $25,565.53 in respect to equipment supplied to him by Mr Poat since November 1994. He states that Eagle Communications Pty Ltd now owes him $22,211.00 for wages not paid to him during his period of employment. He believes the real reason for his dismissal is the debt Mr Poat believes that is owed to him by either Mr Wallace or Eagle Communications Pty Ltd. He denies any misappropriation of funds because he states that in all cases the money was put to the benefit of Eagle Communications Pty Ltd. He accuses Mr Wallace of fabricating evidence for use in the Commission.

The cases presented by both Mr Poat and Mr Wallace were, with respect to them both, not entirely helpful to the Commission. Many accusations made by each against the other are simply unsubstantiated. Such evidence as there is before the Commission reveals a history which, for different reasons, does not reflect well on either Mr Poat or Mr Wallace.

Both Mr Poat and Mr Wallace gave their evidence under oath and each was cross-examined by the other. Much will depend upon the credibility of their evidence. I find it convenient to deal first with a matter where there is adequate documentary evidence to support the oral evidence given by both Mr Poat and Mr Wallace. This matter concerns the purchase of a book known as "*Jane's Space Directory*" (exhibit 1) by Mr Poat. The documentary evidence is clear. On the 30th June 1995 Mrs Poat signed an order to the book's distributor for the book. The book was delivered to "Mr J. Poat, Eagle Communications, 44 Adenia Road, Riverton". That is Mr Poat's private address. It is not the address of Eagle Communications Pty Ltd. The book was received by Mrs Poat. On the 10th July 1995 Mr Poat signed an Eagle Communications Pty Ltd's cheque for $378.00 to the distributor in order to pay for the book. Mr Wallace's evidence is that he did not order the book and did not authorise the ordering of the book. Upon the dismissal of Mr Poat, all cheques outstanding were stopped and the purchase discovered. Mr Poat's only cross-examination of Mr Wallace on this issue was to confirm that the book had been returned and there was nothing outstanding owed. Mr Poat's evidence is that Mr Wallace had given Mr Poat the authority to purchase the book by giving Mr Poat authority to sign cheques and Mr Poat states that Mr Wallace had previously said "that would be a good book to get". I am unable to accept Mr Poat's evidence in relation to the book. There is simply no believable reason before the Commission why a book paid for by Eagle Communications Pty Ltd and intended for Eagle Communications Pty Ltd should be ordered privately by Mrs Poat without Mr Wallace's knowledge and sent to the Poat's home. The evidence irresistibly leads to the conclusion that Mr Poat, with the assistance of Mrs Poat, ordered the book for his own private purposes at Eagle Communications' expense. I find incredible Mr Poat's evidence that he used his own order form because "Eagle Communications did not have an order book" and the distributor needed an order and that he put his own home address as the address of Eagle Communications Pty Ltd for the purposes of the delivery because "... I was at home at the time when I ordered it ...". I am inclined to disbelieve Mr Poat also because, although the issue was one which he had heard made against him in Mr Wallace's

evidence, he did not mention the issue at all in his own evidence. Rather, it was left to Mr Wallace to raise the issue with him in cross-examination. The emphasis of Mr Poat's case is that as the book was eventually returned to the distributor no-one is out of pocket. That is not the point. The return of the book occurred after the cheque was stopped and the purchase became known to Eagle Communications.

This matter became known to Mr Wallace after he had dismissed Mr Poat and is therefore not a reason for the dismissal. However an employer can rely on any misconduct on the part of an employee even if it was unknown to the employer at the time of dismissal. My finding above therefore is relevant to the issue of whether Mr Poat's dismissal was unfair and it also colours my view of the credibility of Mr Poat's evidence. For example, Mr Wallace gave evidence of a cheque which was cashed by Mr Poat for $2,000.00 (cheque no. 1618, 21/6/95). Mr Wallace's evidence is that Mr Poat provided receipts for that cheque only to the value of $612.70. He therefore accuses Mr Poat of skimming money "off the top" from the cheque. To the extent that Mr Wallace was cross-examined on this particular part of his evidence by Mr Poat, his evidence was not broken down and I am inclined to believe Mr Wallace's evidence. Mr Wallace also gave evidence of money given to Mr Poat on the 8th July 1995 by Mr Riggs for work performed in the amount of $833.00. He accuses Mr Poat of keeping all of this amount of money. Mr Poat's evidence is that he returned all of the money to Mr Wallace. I am more inclined to prefer Mr Wallace's evidence over Mr Poat's in this regard. If an employer honestly believes on reasonable grounds after sufficient enquiry that the employee has been guilty of serious misconduct, then a valid reason exists for terminating the employee (*Sangwin v Imogen Pty Ltd*, decision of the Industrial Relations Court of Australia, 6/3/96, unreported, at p.18). On the evidence in these proceedings I find that Mr Wallace had reasonable grounds for believing as he did. Even without needing to consider all of the allegations and counter allegations made during the hearing, these conclusions are sufficient to allow the Commission to conclude that Eagle Communications Pty Ltd had a valid reason connected with Mr Poat's capacity or conduct to dismiss him.

Mr Poat believes that the dismissal was nevertheless procedurally unfair. As the Commission understands the events, a meeting occurred on approximately the 31st July 1995 between Mr Wallace and Mr Poat in the presence of Mr Williams at which Mr Poat was dismissed. Mr Wallace's evidence is that a number of the issues of concern to the company were raised with Mr Poat at this meeting and he was given an opportunity to respond. Mr Poat denies this. But Mr Wallace called evidence from the third person at that meeting, Mr Williams. His evidence is that material relating to Mr Poat's handling or mishandling of cheques was shown to him and discussed with him. Mr Williams' evidence is that Mr Poat was given ample opportunity to respond. I prefer the evidence of Mr Wallace and Mr Williams over that of Mr Poat. I find that Mr Poat was dismissed with one week's notice at that meeting and that was not unfair. Indeed, it may even be seen as generous. The actual dismissal of Mr Poat occurred some two or three days after that event as a result of a heated telephone conversation between Mr Wallace and Mr Poat. However there is nothing in the facts of this event, as I am able to discern them, which would warrant the intervention of the Commission in these circumstances. On the evidence, Eagle Communications was entitled to dismiss Mr Poat for misconduct. Mr Poat's claim that he has been unfairly dismissed is therefore not made out.

The balance of Mr Poat's claim is that he has been denied contractual benefits. Mr Poat claims that he was not paid his last week's wages, he claims two weeks' wages in lieu of notice, three weeks' holiday pay, and the balance of his "work contract" to the 4th December 1995. Eagle Communications Pty Ltd opposes all claims.

It is necessary in these circumstances to consider whether Mr Poat's employment was governed by the Radio and Television Employees' Award No. R 3 of 1980. Under the *Industrial Relations Act 1979*, if Mr Poat's claims, as set out above, are prescribed in the award then the Commission does not have the jurisdiction to grant three of the four claims even if they are merited. When this issue became apparent to the Commission during the course of the proceedings the Commission asked both Mr Wallace and Mr Poat to comment specifically upon the work upon which they were engaged and the relevant clauses of the award. Both did so. Mr Wallace's evidence is that Eagle Communications Pty Ltd is in the "television and antennae industry", that Mr Poat's work fell within one of the definitions of the award and that the award was applicable to his employment. Mr Poat however gave evidence to the contrary. For the above reasons I am inclined not to prefer Mr Poat's evidence, but the question of award coverage is able to be determined on other grounds. When Mr Poat first lodged his application in the Commission on the 8th August 1995 he stated in his claim that the Radio and Television Employees' Award covered his employment. He attempted to alter this later by lodging an amended claim on the 2nd November 1995 which states "not covered by award as discussed with DOPLR". The Commission has no direct evidence of what "DOPLR" did or did not advise and I am not prepared to allow Mr Poat to amend his claim. Further, and significantly, Eagle Communications Pty Ltd employed Mr Poat pursuant to the Jobstart scheme. A number of documents signed by both Mr Wallace and Mr Poat regarding Jobstart were put in evidence. The documents signed by both Mr Poat and Mr Wallace state that the Radio and Television Employees' Award applied to Mr Poat's employment. Because of this, it is now simply too late for Mr Poat to try and alter the situation that he freely entered into with Mr Wallace. I conclude therefore that the Radio and Television Employees' Award applied to Mr Poat's employment and, as a consequence, the Commission does not have the jurisdiction to entertain this part of his claim.

Even if I am wrong in this finding and the award does not of itself apply according to its terms, as a matter of equity and good conscience Mr Poat and Eagle Communications Pty Ltd are bound by their own agreement that the award applied. In that event I would be guided by the terms of the award and I am far from convinced that Mr Poat's claims have been made out.

As to the claim regarding his last week's wages, the evidence is clear that, on the 31st July 1995 (exhibit 18) Mr Poat wrote a cheque for $500.00 cash. He stated in his evidence that he was of the opinion that he was owed money for wages by Mr Wallace and intended to take $500.00 per week for that reason "from now on". That being the case Mr Poat fails to persuade the Commission that it should now require Eagle Communications Pty Ltd to pay him for that week.

As to his claim for payment in lieu of notice, on my finding above Mr Poat was not entitled to be paid in lieu of notice and that claim is not made out.

In relation to his claim for three weeks' holiday pay, the evidence is not clear whether Mr Poat did or did not take holidays at any stage of his employment. However, Mr Poat was employed for less than twelve months and, as I find that Mr Poat was validly dismissed for misconduct, no holiday pay is due to him either under the award or as a matter of merit.

Mr Poat's fourth claim relates to the Jobstart agreement itself. Mr Poat states that the agreement was for twelve months and he claims the "balance of his time from the initial contract date to the end of the contract". I am not sure that this is a benefit under Mr Poat's contract of employment but in any event this claim could only succeed if Mr Poat had been unfairly dismissed. There is nothing in the Jobstart agreement, or in merit, requiring Eagle Communications Pty Ltd to pay Mr Poat to "end of the contract" in these circumstances. The claim is therefore without merit.

It will be apparent to Mr Poat and Mr Wallace that I have not found it necessary to deal with many of the varied accusations and counter-accusations each made against the other during the course of the proceedings in order to decide Mr Poat's claims. As I stated at the beginning of these reasons, many of the accusations were simply that. They were not supported by any other evidence. The mere fact that I have chosen to disbelieve Mr Poat's evidence does not necessarily mean that I unhesitatingly have accepted Mr Wallace's evidence in all aspects. The existence of the earlier relationship between Mr Poat and Mr Wallace and its breakdown leads me to treat some parts of Mr Wallace's evidence with some caution. For example I am satisfied that the informal relationship between Mr Wallace and Mr and Mrs Poat allowed a situation to

develop whereby Mr Poat's vehicle was frequently filled with petrol at the company's expense and Mr Wallace either knew or ought to have known that this was occurring, but I am unable to decide, on the evidence before me, whether Mr Poat was or was not authorised to have his vehicle repaired at Eagle Communications Pty Ltd's expense. Mr Wallace alleged that Mr Poat "scratched out" either the cheque or the cheque butt of cheque No. 1380 but neither showed any sign of alteration nor erasure. I am prepared to accept that the cheque was not used by Mr Poat for "freight" as the butt indicates, but Mr Wallace's accusation was not proven before me. Each accuses the other of not obeying the orders of the Commission regarding production of documents each to the other. During the hearing Mr Wallace produced a two page document (exhibit 9). Mr Poat immediately informed the Commission that the copy of that document, as supplied under order to him by Mr Wallace, had been cut so that it only consisted of one third of the first page. He accused Mr Wallace of not complying with the order and/or attempting to mislead him. Mr Wallace accused Mr Poat of cutting the document himself. The Commission is unable to make any firm comment as to the fault in this regard. It is, however, an illustration of the deterioration of the relationship between them. A further measure of the depth of hostility between Mr Poat and Mr Wallace came when, apparently to attack Mr Wallace's credibility, Mr Poat cross-examined Mr Wallace on the viability of Eagle Communications Pty Ltd and stated that it was Mr Poat's understanding that Eagle Communications Pty Ltd had been deregistered. It became apparent that Mr Wallace did not know whether the company, of which he is the managing director, was still registered or not. Given that Mr Poat has applied for an order to be made against Eagle Communications Pty Ltd by the Commission in Mr Poat's favour, I would hardly have thought it was in Mr Poat's interest to pursue this line of questioning.

The fact is that Mr Wallace should draw little comfort from Mr Poat's failure to prove his claim in this Commission. Mr Wallace was in the position of employer and yet seemed to exercise very little of the control that one would expect from an employer. He made Mr Poat a signatory on the company's cheque account. He exercised little, if any, supervision of its operation. He does not appear to have taken any steps to remove Mr Poat as signatory of the cheque account once he suspected Mr Poat of misusing it. He himself signed blank cheques. In relation to Mr Poat, he did not keep a time and wages record as required by the Radio and Television Employee's Award. Mr Wallace states that it is because Mr Poat never filled it out. However the obligation to keep a time and wages record is Eagle Communications', not Mr Poat's. Mr Poat claims now that he has not been paid any wages for his entire employment. If he has, the production of time and wages records would be a simple answer to the claim. The fact that they do not exist is of no assistance now to Eagle Communications Pty Ltd and the company may well be in breach of the award itself.

One final matter remains. At the conclusion of the hearing I informed both parties that I was concerned regarding the allegations of fraud on the Commonwealth which had been made during the course of the proceedings. I indicated that I would give consideration to the evidence and decide whether to instruct the Registrar of the Commission to forward the transcript and the documents in this matter to the Department of Employment, Education and Training for their own investigation. I have given that consideration and have decided to instruct the Registrar to do so. My reasons for deciding this are as follows. The evidence before me from Mr Poat is that he was either employed or earning income at some stage whilst he was in Darwin before commencing employment with Eagle Communications Pty Ltd, although he was unable to be clear at what time he was employed or unemployed. His evidence on this issue was quite vague and most unsatisfactory. His further evidence is that the CES flew him and his family to Perth in order to take up employment with Eagle Communications Pty Ltd. The evidence of Mr Poat is that, at that stage, he had an invitation from Eagle Communications Pty Ltd to come to Perth to work for it. During the course of the proceedings Mr Wallace accused Mr Poat of defrauding the CES because he had been employed prior to leaving Darwin. Mr Poat denied the accusation.

Further, during the course of the proceedings Mr Poat alleged that he had not been paid any wages at all by Eagle Communications Pty Ltd during his period of employment. However Mr Wallace, on behalf of Eagle Communications Pty Ltd, completed a number of "Claim for Payment" forms for the period of Mr Poat's employment. Part of the documents completed by Mr Wallace claims payment of a wage subsidy in respect of Mr Poat on the basis of wages paid during the claiming period. If indeed wages were not paid by Eagle Communications Pty Ltd then it may be that the forms, as completed by him, are incorrect. In this regard it is to be noted that Mr Poat has also signed the same documents (exhibits 5 and B) stating that "the information provided by the employer in section A is correct". As I read that form Mr Poat is stating that he was paid those wages. That is in marked contrast to the evidence given by him before me that he was not paid the wages indicated. In my view the evidence before me is sufficient to raise a concern that an irregularity may have occurred regarding the operation of the Jobstart scheme and the involvement of the CES in flying Mr Poat and his family to Perth. These are not matters which are directly for the Commission. They are, however, matters which I feel bound to draw to the attention of the Commonwealth for their own investigation. Accordingly I will direct the Registrar of the Commission to forward a copy of the transcript, exhibits 5 and B and the Reasons for Decision in this matter to the officer in charge of the Department of Employment, Education and Training for its own investigation.

The application will be dismissed.

Order accordingly.

Appearances: Mr E.J. Poat on his own behalf.

Mr S.H. Wallace on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eric John Poat

and

Eagle Communications Pty Ltd.

No. 899 of 1995.

COMMISSIONER A.R. BEECH.

27 May 1996.

Order.

HAVING heard Mr E.J. Poat on his own behalf and Mr S.H. Wallace 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—

(1) THAT the application be dismissed.

(2) THAT the Registrar forward a copy of the transcript, exhibits 5 and B and the Reasons for Decision in this matter to the officer in charge of the Department of Employment, Education and Training.

(Sgd.) A. R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

A.V. Riley
and
Kaiser Engineers Australia Pty Ltd.
No. 1410 of 1995.

COMMISSIONER A R BEECH.

21 May 1996.

Order.

WHEREAS an application was lodged in the Commission for an Order pursuant to section 29 (1)(b)(i) of the Industrial Relations Act, 1979;

AND WHEREAS the applicant advised the Commission that he wished to withdraw the application;

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 withdrawn by leave.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Rocky Rozario
and
Allwest Print Pty Ltd.
No. 1204 of 1995.

COMMISSIONER C.B. PARKS.

30 April 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

THE COMMISSIONER: No appearance has been entered in this matter on behalf of the applicant, Mr Rozario, however the Commission is satisfied that it should proceed and dispose of the matter.

At an earlier proceeding, the significance of which I will address later, the applicant was represented by Mr W. Swain (of counsel) however subsequent thereto, on 15 April 1996, Mr Swain informed the Commission that he no longer acted for Mr Rozario. On 18 April 1996 a Notice of Hearing giving notice of today's proceedings was forwarded by post directly to the applicant at his address of record, namely 3136 Albany Highway, Armadale WA 6112. That notice has not been returned to the Commission by the postal authorities and hence I am prepared to assume that such has been delivered to the given address and, thereat, claimed by the applicant. Further, information contained within the records of the Commission indicates that Mr Rozario no longer wishes to pursue his application and that had previously been made known to the agent for the respondent. The Commission therefore proceeded to hear from the agent for the respondent.

It is asserted for the respondent that, at a proceeding conducted by an officer of the Commission on 19 December 1995, the parties settled the dispute between them. The said terms of settlement have been enunciated to the Commission however, apart from one aspect thereof, the details are not relevant to the disposition of this matter and consequently they are not repeated herein. That which is relevant is the undertaking the applicant is said to have given that he would act to discontinue his application before the Commission. According to the respondent it has complied with the terms of the settlement it was obliged to meet. The applicant has not done so, it is said, and therefore the Commission is asked to dismiss the application.

The Commission, acting pursuant to s.93(8) of the Industrial Relations Act, 1979, directed an officer of the Commission to investigate and report to it in relation to the application by Mr Rozario. A report from that officer, dated 9 April 1996, indicates that such an investigation had been undertaken and thereat the applicant had been represented by Mr W. Swain (of counsel). The report also states—

> "The parties reached an agreement to settle the matter at the meeting, but a notice of discontinuance has not been filed".

The meeting referred to in the foregoing extract was held on 19 December 1995, as has been submitted by the agent for the respondent. In view of the report having been made several months after the date of the meeting referred therein, and therefore the settlement also, I believe that by the use of the phrase "but a notice of discontinuance has not been filed" the author intended to convey that not only had a "Notice of Discontinuance" not been filed in the Registry of the Commission but that that constituted a failure by the applicant to comply with an agreed term of the settlement.

This, I am satisfied, provides corroboration of the discontinuance arrangement the agent for the respondent says had been made, although none is necessary. More importantly the Commission is satisfied, both by the statement from the bar table and the report made pursuant to s.93(8) of the Act, that the parties agreed a settlement of the matters raised by the application. And further, that the respondent has honoured its part of the bargain. It is therefore most probable that there has been no representation on behalf of Mr Rozario because, to his eyes, the application he made has been resolved to his satisfaction and of no further interest to him.

The application ought be disposed of. It is requested that such be effected by way of its dismissal. There being no apparent prejudice arising from this course, I will so order.

Appearances: No appearance on behalf of the applicant.

Mr S. Heathcote appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Rocky Rozario
and
Allwest Print Pty Ltd.
No. 1204 of 1995.

COMMISSIONER C.B. PARKS.

10 June 1996.

Order.

HAVING heard Mr S. Heathcote on behalf of the Respondent and there being no appearance on behalf of the Applicant, 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.) C.B. PARKS,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Michael John Walton
and
Oregon Holdings Pty Ltd trading as The Circuit Cabaret and Function Centre.
No. 427 of 1996.

COMMISSIONER C.B. PARKS.

20 May 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

THE COMMISSIONER: So far as is material to the present matter, the Respondent conducts a night club style operation at its premises, mainly on Friday and Saturday nights and sometimes other nights associated with public holidays. The Applicant, save for a few occasions, worked for the Respondent on each night the club opened for business between March 1994 and April 1995. His primary function had been to act as a doorman and provide security at the venue in conjunction with other persons.

The Applicant last worked for the Respondent for a period of approximately two and one half hours, from late on Friday, to early Saturday morning 22 April 1995.

It is contended by Mr Walton that although he has not been rostered to work, and therefore has not worked for the Respondent since 22 April 1995, they were party to an employment contract which was ongoing until at least 25 February 1996 when it became apparent that he would not be rostered for further work. Between these dates Mr Walton enquired of the Respondent about being "rostered" for further work. The responses given to Mr Walton were non committal and were taken by him to mean that a relationship with the Respondent continued and that further work was likely to be provided to him. Hence it is his claim that he is entitled to be paid wages for the estimated periods of time there had been the potential for him to work each night the club has opened for business between the relevant dates in April 1995 and February 1996 were he to have been rostered to do so.

The Respondent denies that it had any form of continuing employment relationship with Mr Walton and asserts that although he had regularly worked as he claims, he had been engaged and subsequently separately re-engaged in each of the calendar weeks that he worked. Each such engagement was entered into, it is said, upon the notification to Mr Walton, and his acceptance via telephone, on or about Tuesday or Wednesday of each calendar week, of offered work of an undetermined duration on specified nights, work which Mr Walton was not obligated to undertake and which he did not accept on occasions.

According to Mr Walton, he had been contacted on a Tuesday night of each week and then notified of the nights the Respondent had "rostered" him to work. This regular contact with him and the "rostering" of him to work nights chosen by the Respondent, in his view, displays that there had been an ongoing employment relationship. It was readily conceded by Mr Walton that he was not obligated to work on the nights notified to him and that on two occasions he had elected not to do so. The Applicant also readily volunteered that although he could usually expect to work for a four hour period on the nights he worked, the duration of the work could legitimately be varied by the Respondent at any time on a given night and that he be paid for whatever hours were actually worked by him.

The applicant believes that the respondent acted unfairly toward him when management ceased to provide him with work, or "roster" him as he put it, and in part, Mr Walton set out to establish that such was the case. That matter is not relevant to the issue to be determined and therefore I make no finding regarding it.

In order for the claim in this matter to be made out, the Commission needs to be satisfied firstly, that a contract of employment existed between the Applicant and the Respondent after 22 April 1995 and until at least 25 February 1996, and secondly, that the express or implied terms of such a contract entitles the Applicant to the benefits he asserts are due to him.

I am satisfied from the evidence that the Respondent maintained a record of persons usually available to work for the Respondent, and whom are classified as casual employees, including the Applicant. Management of the Respondent selected persons weekly from that record to work as required, i.e. on a particular night or nights in the material week and for whatever hours were suited to the operational requirements of the club. Mr Walton and others were then notified weekly the nights in that week upon which work was being made available to them. Not all persons listed in the record were given regular work, or were available for regular work.

Mr Walton was not obligated to work on each night notified to him, and did not work when it did not suit him. On the nights he did work, the duration of that work was not consistent, nor was it predetermined each week. Hence, I am satisfied that Mr Walton is a person who formed part of a pool of potential employees from which the Respondent selected those whom were necessary to employ each week to meet the operational requirements of the club. The Applicant had suited the requirements of the Respondent and had therefore been regularly selected to work. There is no evidence that the Respondent had undertaken to provide regular work to the Applicant. No form of control was exercised over the Applicant by the Respondent and he was always free to decide whether he would undertake the work proffered to him.

Absent of any contrary indicia, I am satisfied that each week in which Mr Walton worked such followed upon the offer and his acceptance of that work, the duration of which was flexible, and hence each week constituted a new contract of employment. I therefore find that the contract of employment which was entered into on or about the Tuesday prior to Sunday, 22 April 1995, ended that Sunday. No new contract of employment was entered into after this date and therefore there was no subsequent entitlement to work or payments from the Respondent.

This application will therefore be dismissed.

Appearances: The Applicant appeared on his own behalf.

Ms C.A. FitzGibbon appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Michael John Watson
and
Oregon Holdings Pty Ltd trading as The Circuit Cabaret and Function Centre.
No. 427 of 1996.

COMMISSIONER C.B. PARKS.

7 June 1996.

Order.

HAVING heard Mr M.J. Watson on his own behalf and Ms C.A. FitzGibbon on behalf of the Respondent, 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.) C.B. PARKS,
[L.S] Commissioner.

SECTION 29 (b)—Notation of—

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Automotive, Food Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch	Workforce Solutions	CR40/1996	Halliwell S.C	Discontinued
Anderson I.	Perth Hospitality Professionals Pty Ltd	1234/1995	Parks C.	Discontinued
A P C Storack	Belinda Kaye Bulford	773/1995	Parks C.	Discontinued
Brailey D.L.	Finville Holdings Pty Ltd t/a Century 21 Active Realty	1286/1995	Halliwell S.C.	Discontinued
Britton T.L.	Action Hire Cars	1139/1995	Halliwell S.C.	Discontinued
Byng B.J.	Sun City Cleaning Service	1030/1995	Halliwell S.C.	Discontinued
Byng G.E.	Sun City Cleaning Service	1058/1995	Halliwell S.C.	Discontinued
Chong C.	John Dorrington t/a Clayko Group	216/1996	Halliwell S.C.	Dismissed
Googe J.M.	W.R.B. Transport	463/1996	Halliwell S.C.	Discontinued
Gould M.J.	Sullivan Commercial Pty Ltd	1211/1995	Halliwell S.C.	Discontinued
Jackson D.	George France Photography	1178/1995	Parks C.	Withdrawn
Jesnoewski E.	L & H Musca Stone Mason	1167/1995	Parks C.	Discontinued
Laurie L.	WA Truck & Machinery Repairs Pty Ltd	1121/1995	Halliwell S.C.	Discontinued
Lodge S.	HECS Fire	1215/1995	Parks C.	Discontinued
Maes R.W.	Armacrete WA Pty Ltd	656/1995	Halliwell S.C.	Discontinued
McGuire K.D.	W.R.B. Transport	462/1996	Halliwell S.C.	Discontinued
Monro T.	West Australian Baseball League	1074/1995	Halliwell S.C.	Discontinued
Riley S.	Lanigan Wilson & Co (Ms Catherine Lanigan)	1408/1995	Parks C.	Discontinued
Scally P.C.	L D & R Holdings Pty Ltd t/a Nu-Way Motors	777/1995	Parks C.	Discontinued
Scott T.A.	A D T Security Pty Ltd	942/1995	Parks C.	Withdrawn
Spina E.	(Isabell Harris) Fisher Catering	1420/1995	Halliwell S.C.	Discontinued
Spotless Services Australia Limited	More R.W.	152/1995	Halliwell S.C.	Discontinued
Watson D.W.	Benra Pty Ltd t/a Gelflex Laboratories	1023/1995	Halliwell S.C.	Discontinued
Yeark S.G.	Prestige Motors Pty Ltd	865/1995	Parks C.	Discontinued

CONCILIATION ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
and
The Cerebral Palsy Association of WA Ltd.
No. 305 of 1996.

COMMISSIONER C.B. PARKS.
22 May 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr M. O'Connor on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 having satisfied itself that the principles in the State Wage Case Decision of March 1996 have been complied with hereby makes an Order in the terms of the attached Schedule operative from the date specified therein.

(Sgd.) C.B. PARKS,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Order shall be known as the Residential Care Workers' (Cerebral Palsy) Order of 1996 and shall replace the Residential Care Workers' (Cerebral Palsy) Order of 1995 No. 129 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Conditions of Employment
5. Wages
6. Term

3.—AREA AND SCOPE

This Order shall apply to all Residential Care Workers employed by the Cerebral Palsy Association of WA (Ltd) in the state of Western Australia.

4.—CONDITIONS OF EMPLOYMENT

The provisions of the Private Hospital Employees Award No. 27 of 1971 shall be applied to the employees covered by this Order mutatis mutandis.

5.—WAGES

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

	Base Rate Per Week $	1st & 2nd Arbitrated Safety Net Adjustment $	Total Rate Per Week $
Residential Care Workers			
1st year of employment	388.00	16.00	404.00
2nd year of employment	398.50	16.00	414.50
3rd year of employment	419.10	16.00	435.10
4th year of employment	424.10	16.00	440.10

(2) (a) The rates of pay in this order 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 Principals, except those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) The rates of pay in this order 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.

6.—TERM

The term of this Order shall be for a period of twelve months from the beginning of the first pay period commencing on or after 1 January 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Red Cross Society (Western Australian Division).

No. 44 of 1996.

COMMISSIONER C.B. PARKS.

30 May 1996.

Order.

HAVING heard Mr D. Kelly on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 having satisfied itself that the principles in the State Wage Case Decision of March 1996 have been complied with hereby makes an Order in the terms of the attached Schedule operative from the date specified therein.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Order shall be known as the Drivers' (Red Cross Blood Transfusion Services) Order of 1996 and shall replace Orders No. 1231 of 1990 and 1639 of 1991.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Conditions of Employment
5. Wages
6. Disputes Procedure
7. Term

3.—AREA AND SCOPE

This Order shall apply to all Blood Transfusion Service Drivers employed by the Australian Red Cross Society (Western Australian Division) in the State of Western Australia.

4.—CONDITIONS OF EMPLOYMENT

The provisions of the Private Hospital Employees Award No. 27 of 1971 shall be applied mutatis mutandis to the employees covered by this Order except that the following paragraphs shall be added to Clause 15.—Annual Leave, Clause 16.—Public Holidays and Clause 19.—Uniforms.

(1) In subclause (1) of Clause 15.—Annual leave add the following paragraph:

(d) In the case of Blood Transfusion Service Drivers employed by the Australian Red Cross Society (Western Australian Division), a period of four consecutive weeks leave shall be allowed to an employee by the employer after each period of 12 months' continuous employment.

(2) In Clause 16.—Public Holidays, add the following subclauses:

(4) In the case of Blood Transfusion Service Drivers employed by the Australian Red Cross Society (Western Australian Division), employees shall be:

(i) rostered off duty without loss of pay on the days (or days observed in lieu thereof) specified in subclause (2) of this clause; and

(ii) able to take the extra days' leave each year in lieu of 2 January and Easter Tuesday, at a later date by agreement with management provided that under no circumstances will these days accrue beyond the year in which they occur.

(5) The future of the days mentioned in (4)(ii) above will be discussed in the enterprise bargaining process.

(3) In Clause 19.—Uniforms, insert the following subclause (1) in lieu of the existing subclause (1):

(1) Where the employer requires a uniform to be worn, a supply of such uniforms shall be made available for use by each employee but such uniforms shall at all time remain the property of the employer.

5.—WAGES

The minimum rate of wage payable to employees covered by this Order shall be as follows:

(1) Driver	Base Rate Per Week $	1st & 2nd Arbitrated Safety Net $	Total Per Week $
1st year of employment	418.40	16.00	434.40
2nd year of employment	421.80	16.00	437.80
3rd year of employment and thereafter	425.20	16.00	441.20

(2) Provided that a Driver employed as a Mobile Assistant shall be paid in addition to his/her ordinary rate an allowance of 23 cents per hour or part thereof. The allowance shall be paid for all purposes of this Order.

(3) The rates of pay in this order 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.

(4) The rates of pay in this order include the second $8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The 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

6.—DISPUTES PROCEDURE

Any questions, dispute or difficulty arising under this order shall be dealt with according to the procedure prescribed in Clause 42.—Dispute Settlement Procedures, of the Private Hospital Employees Award, 1972.

7.—TERM

The term of his Order shall be for a period of 12 months from the beginning of the first pay period commencing on or after 1 September 1995.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Western Mining Corporation.

No. CR117 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

6 May 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.

(1) The Union seeks reinstatement of Marc Devany(sic) to his previous position, that is Diesel Operator, without any loss of earnings as per Piecework Contract and further, that there be no loss of any other Award entitlements for the period from termination to date of reinstatement.

(2) The Respondent objects and opposes the claim....

Background

In February 1996 First Class Constable A. Watson on routine patrol duties found a vehicle registration plate on the roadside in the Kambalda area. A computer check of vehicle registration details revealed the vehicle owner's name and address and on Monday 26/2/96 F.C. Constable Watson arrived at the vehicle owners residence to return the registration plate to him.

F.C. Constable Watson knocked on the front door and after several minutes the door was opened by Mr M. Deveny. F.C. Constable Watson explained he was returning the lost registration plate and the two person's then walked a short distance to Mr Deveny's motor vehicle where he attached the registration plate to his vehicle. F.C. Constable Watson then departed. On his arrival at the Kambalda police station F.C. Constable Watson reported to the Sergeant in Charge that he had noticed a strong smell of cannabis smoke when Mr M. Deveny had opened the door of his residence and that walking to the vehicle with Mr Deveny he further noticed the same smell on Mr Deveny's clothing. The Sergeant in Charge suggested he obtain a search warrant and return to the premises at a later date.

On the 14/3/96 Senior Constable G. Moisevich and F.C. Constable Watson arrived at Mr Deveny's residence with a search warrant and upon searching the rooms found approximately two (2) grams of cannabis under the bed. When asked Mr M. Deveny said it was in his possession and was advised by S.C. Moisevich that he would be prosecuted by summons on a charge of possession of cannabis. On the 21/3/96 Mr Deveny was served with the summons and on 27/3/96 before two Justices of the Peace in Kambalda Court, Mr Deveny pleaded guilty to a charge of possession of cannabis was convicted of that offence and fined $150.00.

Senior Officials of Western Mining Corporation at it's St Ives Goldmining operations became aware of Mr Deveny's conviction and on about 9/4/96 conducted an investigation with Mr Deveny and the site union representative Mr Deamer present. At the conclusion of the investigation the underground manager Mr B.B. Dawes informed Mr Deveny that Western Mining Corporation would review his continued employment. On 10/4/96 Mr Deveny's services were terminated "...as a result of you possessing an illegal substance on Company property..." and his single accommodation was withdrawn forthwith. The Australian Workers' Union, West Australian Branch, Industrial Union of Workers filed an application for conference pursuant to section 44 of the Act alleging that Mr M. Deveny had been unfairly dismissed. However a strike by approximately two hundred and fifty (250) employees of Western Mining Corporation at its St Ives Gold Operation and the nickel refinery at Kambalda commenced and having heard the parties the Commission as presently constituted pursuant to section 44(6)(b)(a) of the Act issued the following Order:

"...(1) All employees of the Respondent employed at the Kambalda Nickel Operation and the Junction Gold Mine shall resume work in accordance with their contracts of employment and the provision of the Nickel Mining and Processing Award No. 18 of 1965 and the Gold Mining Consolidated Award No. 27 of 1967, no later 9.00am on Friday 19th April 1996 and shall continue normal work thereafter.

(2) The applicant union shall immediately advise its members employed by the respondent at the location in (1) above of this Order and shall by all legal means ensure it and its' members comply with it.

(3) That Mr M. Devaney(sic) be re-employed but under suspension from duties at the wage rate provided in the Gold Mining Consolidated Award, 1980 No. 21 of 1967 until the Commission has determined by arbitration the claim for reinstatement.

(4) The Order shall operate from 3.00pm on the 18th day of April 1996 and remain in force until the alleged unfair dismissal of Mr M. Devaney (sic) by the respondent has been heard and determined by arbitration by the Commission...."

The above Order was complied with by the parties and on the 24th and 25th April the matter proceeded by arbitration at the Kalgoorlie Court House before the Commission.

Significant Evidentiary Conflicts

Mr M. Deveny maintained throughout his evidence that upon the discovery of the cannabis under the bed in a magazine in his room and upon being asked whose is this he replied "...its in my room I guess it's in my possession!"

Mr G. Walton a witness called by the applicant, when questioned as to this aspect testified that the words used by Mr Deveny were "Oh its mine!" Both police officers S.C. Moicevich and F.C. Constable Watson steadfastley maintained that upon discovery of the cannabis Mr Deveny in answer to the question "...whose is it?" replied "it's mine!" Constable First Class R.L. Eastman gave evidence as to the events at the Kambalda Court on 27th March 1996. He was the prosecuting officer on that day. His evidence was that the statement of facts he read to the Court, included that Mr Deveny "readily

admitted" the cannabis was his for his own use." On balance of probabilities the Commission prefers the evidence of the police officers and Mr Walton on this particular issue. Firstly because listening to Mr Deveny's total evidence his use of the words "...I guess its in my possession" are foreign to the language used throughout the rest of his evidence. Secondly, the police officer's were disinterested parties to these proceedings and as to this issue their evidence was quite unshaken. Thirdly, Mr Walton's recollection of the words used by Mr Deveny ie. "It's mine" accords with that of the police officer's.

Mr Deveny testified to the effect that he understood from his conversation with the police officer's who searched his room, that possession of cannabis was a minor matter, it was equivalent to a parking ticket and fine.

This contention was disputed by the two police officer's concerned who stated they had not so suggested to Mr Deveny. The Commission's clear impression from all of the evidence, of Mr Deveny, the police officers who served the summons upon him and the facts presented to the Court is that, tragically, Mr Deveny was convinced that the charge was a minor one and would not result in a conviction of the sort that would jeopardise his employment with Western Mining Corporation. How he obtained this clear impression it is unnecessary to decide. That he held that view is clear from the evidence.

On or about the 3/4/96 Mr B.B. Dawes, Manger Underground Mining, St Ives Gold Mines was advised that Mr M. Deveny had been convicted of possession of an illegal drug at the single person's quarters (hereinafter called S.P.Q.). After a discussion with Mr S.G. French, Resident Manager, St Ives Gold Mines, it was decided to stand Mr Deveny aside on full pay pending further investigation. On the 5th April 1996, a Mr Wellton, Manager of the Junction Mine, stood Mr Deveny aside from duty.

A meeting took place on the morning of the 9th April 1996, between Mr Dawes and Ms McLelland from Western Mining Corporation and Mr Deveny and Mr Deamer, Australian Workers' Union, West Australian Branch, Industrial Union of Workers site representative, which apparently lasted for approximately twenty (20) minutes.

Mr Deveny conceded to Mr Dawes the fact of his conviction for possession of cannabis at the S.P.Q. but claimed that whilst the cannabis was found in his room in the S.P.Q., it did not belong to him. Mr Deveny further stated that there were other friends of his in the room at the time (of the police search). Mr Deveny did not volunteer nor was he asked who owned the cannabis, found in his room by the police officers, during the investigation by Mr Dawes and Ms McLelland.

Following this investigation Mr Dawes had further discussions with Mr S. French, Resident Manger, who then decided that Mr Deveny's services were to be terminated. On the 10/4/96 at a further meeting, Mr Dawes told Mr Deveny in Mr Deamer's presence that his services were terminated and his accommodation rights were withdrawn. Mr S.G. French, Resident Manager, St Ives, gave evidence as to how and why his decision to terminate Mr Deveny's services was arrived at. He stated entia alia.

> "...Why did you decide to dismiss Mr Devany(sic) from his employment?—Mr Devany(sic) pleaded guilty to possession of cannabis on our mining leases, and the possession of cannabis and the presence of cannabis on our mining leases—- if cannabis is present on our mining leases, then there is potential consumption. That risk and the risk to safety of all my employees was a risk I could not ignore. I have a duty of care to all employees. This risk was made aware to me; I had to act on it.
>
> When you say you had a duty to act on the risk once it was made known to you, why do you think you had such a duty?—Because I'm the registered manager under the mining regulations; the registered manager of St Ives Gold operation. It's my duty of care as an employer and as registered manager, to act on that.
>
> MR POWER: When you came to make the decision, what information did you have before you?—I had the information that mark Devany(sic) had pleaded guilty to possession of cannabis; that he had said to the police, "yes, it's mine. It's for my own use. It puts me to sleep", and that was it.
>
> Where did that information come from?—I was informed by my HR manager, Geoff Fricker, that the—- that Mark Devany(sic) had pleaded guilty in court to the charge of possession of cannabis.
>
> Had the other information to which you referred come from other Western Mining employees?—The information about the police investigation had come to me from my counterpart at Kambalda Nickel, Mr Tony O'Niell. I also had information from my mining manager, Brian Dawes, after he had spoken to mark Devany(sic) on the 9th of April; after he'd been stood aside for 5 days; that he said "It was mine..."
>
> "...Senior Commissioner,, what I had to weight up was the information I had in front of me. There were several courses of action. I could have suspended him and removed SPQ accommodation rights. The reality was that information I had was firstly that he had admitted it to be his during the course of police investigation; he had pleaded guilty; and only 4 weeks later when Brian Dawes said "Your employment is at risk here" did he make a statement and say "Well, it wasn't mine".
>
> I had no evidence in support of that claim..I had to balance those two and place my credence in the legal process. He had admitted it...."""
>
> (Transcript pages 147 & 148)
>
> "...Why didn't you think withdrawing the SPQ rights was enough?—Because it does not remove the risk from the workplace.
>
> What do you mean by that?—Because I can't police Mr Devany(sic) 24 hours a day. I can never guarantee that he will not appear in my workplace under the influence of cannabis, and present a risk to the safety of my employees...."
>
> "...It's apparent from what you've said that you didn't accept his explanation that it wasn't his. Why didn't you accept that?—I had no evidence to support it. I found it implausible.
>
> What did you find plausible?—The fact that during the police investigation and in court Mr Devany(sic) himself in his own words pleaded guilty; said it was his. I had no more compelling evidence than his own words..."
>
> (Transcript pages 149)
> (Emphasis Added)
>
> "...And why did you form the view that rehabilitation wasn't appropriate?—Because of the risk. Senior Commissioner, what choice did I have? What could I have done? Should I have waited until Mark Devany(sic) appeared at work under the influence of cannabis, caused injury to his workmates, and then act, or make the right decision now and remove that risk from the workplace and guarantee that it will never happen on my mining lease? I had to take that decision...."
>
> (Transcript pages 156)

Summary

The applicant's position is—

A) That the rules of procedural fairness were not observed in the investigation by Mr B. Dawes and in particular no investigation was made into Mr Deveny's claim that the cannabis found did not belong to him.

B) Mr Deveny understood the charge of possession of cannabis to be a minor offence akin to a parking fine and thus didn't "dob in a mate". The "mate" having applied for a job with Western Mining Corporation and if convicted of possession of cannabis would not be employed by Western Mining Corporation.

C) The assumption had been made by both Mr Dawes and Mr French that it followed that possession of cannabis clearly implied use of the substance by the possessor. In the present case Mr Deveny denied during his evidence that he was a user of cannabis and had only experimented with it at 17 years of age and not since.

D) The offence, if that proposition is accepted, was committed outside working hours in the employee's leisure time and in the employee's personal accommodation.

E) There was before the Commission sworn evidence by witness X that Mr M. Berry placed the cannabis on the magazine under the bed where it was discovered during the police search.

Mr Power for the respondent strongly contends as follows—

A) Mr Deveny did not when the cannabis was discovered, nor when issued with the summons or before the Court deny in any way that it was his cannabis for his use.

B) Mr Devaney was aware that a conviction for possession of cannabis could adversely affect his employment with Western Mining Corporation.

C) When on 9/4/96 it became apparent to Mr Deveny that he might be dismissed by Western Mining Corporation, his story altered and for the first time Mr Deveny said the cannabis wasn't his but belonged to someone else. He did not tell Mr Dawes the name of that person or person's at the investigation or later on the 10/4/96.

D) The maximum penalty for possession of cannabis under the Misuse of Drugs Act is $2000. The Mines Safety and Inspection Act and Regulations 1994 subregulation 4.74 provides for a maximum $5000 penalty for possession of a deleterious drug. Thus Parliament itself places great emphasis on mine safety and the possession of drugs on a mine site.

E) Mr French was faced with assessing a real risk, in that on the information he had, Mr Deveny had pleaded guilty to possession of cannabis, it was a proper and reasonable assumption that he used it and therefore could come to work under the influence of cannabis and could thus injure himself and other employees in the mine.

F) The duty of care towards the employees in the mine compelled the result, in the circumstances in (E) above, of termination of services of Mr Deveny to minimise risk in the mine.

From consideration of all the evidence, and submissions the Commission makes the following findings—

1. Mr M. Deveny was charged with possession of cannabis, pleaded guilty to that charge, was convicted and fined $150 dollars with $98 dollars costs.
2. Mr M. Deveny at the time of the search of his residence by the police officers and the discovery of the cannabis agreed that the cannabis belonged to him.
3. When the police officer's served him with the summons which was some time after (2) above occurred he was advised of his options when his case was heard by the Court. These options were to enter no plea and the case would be transferred to and heard in the Kalgoorlie Court, plead not guilty or plead guilty.
4. Being aware of these options nonetheless Mr Deveny as stated in (1) above pleaded guilty to the charge. However he sought that no conviction be recorded by the Justices of the Peace. This request was refused.
5. Mr M. Deveny had worked four (4) shifts after his conviction and prior to being stood aside on full pay.
6. At the investigation conducted by Mr B. Dawes on 9/4/96, Mr Deveny became aware for the first time how seriously Western Mining Corporation viewed his conviction for possession of cannabis at the single persons quarters, which are within the mining lease.
7. Mr Deveny for the first time stated the cannabis was not his but did not state nor was he asked to whom it belonged. Further, Mr Deveny did not state nor was he asked whether he used cannabis.
8. Neither Mr Dawes nor Mr S.G. French further investigated or caused to be further investigated the claim of Mr Deveny's (6) above and the decision of Mr French to terminate his services was made without such investigation.
9. At the hearing before the Commission sworn evidence was given by Mr X that the cannabis belonged to a Mr M. Berry. This was the first occasion that such specific information was made known to the respondent.
10. Witness X's evidence stands alone so far as other independent corroboration is concerned. However the Commission very closely observed Mr X during the giving of his testimony and formed the view that it was well rehearsed but that once he was removed from simple recitation by cross examination, answers were given only after over lengthy consideration before response and inconsistencies in this evidence were demonstrated. In the result the Commission has regarded his evidence with considerable caution.
10. The investigation held by Mr Dawes clearly did not afford procedural fairness to Mr Deveny. Firstly Mr Dawes and later Mr French held the firm view that his (Deveny's) plea of guilty and subsequent conviction required nothing further of them, other than to determine the industrial penalty.

    Secondly Mr S. French who was to make the decision after receiving Mr Dawes report, did not give Mr Deveny the opportunity to be heard by him personally before he (Mr French) reached his final decision to terminate Deveny's service's.

Precedent

The case of Laurie V. Mount Gunson Mines Pty Ltd (48SAIR656-681) before Justice Olsson President of the Industrial Court of South Australia (as he then was) has a number of similarities with the present case. I therefore cite extensively from that judgement.

"...The relevant facts either expressly found by the learned magistrate or clearly emerging from the material before me may be summarised as under—

(1) The appellant had continuously been employed by the respondent at its mine site at Mount Gunson in the North of the State from some time in 1973 until he was summarily dismissed on or about 3rd April 1981. At date of dismissal he was classified as a machinist.

(2) On 30th March 1981 police visited the Mount Gunson mine area and carried out searches and interviewed various persons. In the course of this activity the police found six so called "Buddha sticks" (i.e. a concentrated form of marijuana) in the appellant's work locker. He was thereupon arrested and taken to Woomera, where he was charged with unlawful possession of the drug. At the same time two other employees of the respondent were also arrested for drug offences and charged. Having been charged the appellant resumed work at the mine and no disciplinary action was initiated against him under the relevant disciplinary code in force at the mine site.

(3) The learned magistrate records in his reasons for decision, apropos the appellant, that—

"He was charged with and pleaded guilty to possession of marijuana because he said the police advised if he pleaded guilty, he would be fined $100.00 to $150.00 whereas if he sought the advice of a solicitor and pleaded not guilty, it would cost him $1000.00 to $1500.00. So although he claimed he knew nothing of the marijuana found in his locker and that it had been put there without his knowledge by someone else, he pleaded guilty to the charge..."

(One difficulty which I have in this regard is that His Honour did nor proceed to make a specific finding as to whether, on the evidence, he accepted the appellant's assertion in this regard as being the true situation. I shall return to this topic shortly.)

(4) The appellant attended in Court on 31st March 1981 and pleaded guilty to the charge. He said that he was fined $130 including costs. It seems clear that, prior to so pleading he spoke to one Giblett, his foreman,

and sought the latter's opinion as to whether such a plea would place his employment with the respondent in jeopardy. It is equally clear that Giblett told the appellant that he did not see any such problem arising.

(5) On 31st March 1981 the appellant returned from Court to the mine site by lunch time. Whilst he was having lunch Giblett asked him to return to work that afternoon because he was needed. Giblett deposed that, in doing so, he was unaware of there being any likelihood of the appellant being dismissed. The evidence strongly indicates that the appellant did work, as requested, in the afternoon.

(6) At the conclusion of work on 31st March 1981 the appellant left the mine site for a normal period of six days "off roster". He returned to his home at Bute.

(7) On 3rd April 1981, following discussion between senior officers at the mine site a telegram was sent by the respondent to the appellant at Bute summarily terminating his employment as of that day. The text of the telegram was as follows—

"IN VIEW OF YOUR RECENT CONVICTION ON A DRUG OFFENCE AT MOUNT GUNSON (AN OFFENCE COMMITTED ON COMPANY PREMISES) THE COMPANY ADVISES THAT YOU EMPLOYMENT HAS BEEN TERMINATED FROM TODAY 3.4.1981 A LETTER WILL FOLLOW INCLUDING A CHEQUE FOR MONIES OWING TO YOU PLUS ONE WEEKS PAY IN LIEU OF NOTICE

FLOOD"

A confirmatory letter to the same effect was despatched on 4th April 1981..."

(pg 659 -661)

"...Towards the conclusion of his written reasons for decision the learned magistrate said—

> "The applicant pleaded guilty to a charge of being in possession of marijuana. I do not think I can go behind that conviction for the reasons the applicant now advances or any other reason, but even leaving it aside, accepting the evidence of the respondent's witnesses as I do, I would have no doubt that the applicant prior to the 30th march 1981, had been in possession of marijuana on the camp site and had used it on site, although I hasten to point out that there is no evidence that the respondent had any evidence that the applicant had smoked marijuana on site at the time it decided to dismiss him."

With respect, I find some difficulty in the conceptual approach of the learned magistrate as above expressed. True it is that the plea of guilty and the conviction flowing from it are irrefutable facts—moreover they are facts that could bear heavily upon the issue of the appellant's credibility in advancing a story contrary to the admission implicitly in a plea of guilty.

However, within section 15(1)(e) proceedings, there is no reason in logic or principle why the appellant should not be permitted to explain his reasons for entering a plea of guilty—even if the explanation suggests that he was not in fact guilty. Indeed there is nothing inherently improbable in his explanation; and his conversation with the foreman Giblett is highly consistent with the alleged motivation.

That is not to say that, on the balance of probabilities, the weight of the evidence does not strongly suggest that he was not "framed" as he suggests, and that he well knew that the Buddha sticks were in his locker. His past admitted possession and use of the drug and the total scene portrayed by the evidence tell heavily against him. The magistrate's rejection of his protestations of innocence on this score can therefore scarcely be impeached.

Finally it is important to consider the learned magistrate's summary of the situation contained on the final page of his written reasons for decision. He said—

> "What the respondent had before it, when it decided to dismiss the applicant was its concern for the safety of workmen which might be endangered by their smoking marijuana, that the applicant was the shop steward and senior representative on site of the AMWSU, the management had told him that the use of drugs was not to be tolerated, that he was aware of the written instructions forbidding the use of marijuana on site, that it had enlisted his aid to suppress it, that he had addressed a meeting of employees accordingly and was then found to be in possession of marijuana."

This, without doubt, is the true rationale of the magistrate's reasoning. His summary of the factual import of the evidence implicity in it was clearly open upon the material placed before him.

Given that position there is, however, a major difficulty which arises.

Even if one accepts that the respondent's management had all of the above factors in mind it is inescapable that the critical point was the finding of the Buddha sticks in the possession of the appellant. This was the "triggering" fact, coupled with the conviction, which led to the dismissal.

However, the decision was made without management seeking any explanation from the appellant or affording him any opportunity of proffering one; and this even although a substantial period elapsed between arrest and conviction—a period during which he continued in employment without being subject to suspension or other action under the disciplinary code. The evidence is totally equivocal as to how the sticks came into the appellant's locker and how long they had been there. The essential publicised prohibition was against use of the drug at Mount Gunson—it was this which was specifically proscribed. There was not a scintilla of evidence to establish that the appellant in fact used the drug at Mount Gunson at any time relevant to the dismissal.

Even if the stick were of recent origin it is, for example, quite feasible that they were acquired to take to the applicant's home at Bute to be smoked there. No steps were ever taken to establish the true situation one way or the other.

I am quite unable to accept that, for present purposes, it was proper for the respondent in arriving at its own decision to dismiss to equate possession with use.

In clear and unequivocal terms the respondent had quite reasonably proscribed use of the drug at the mine site. Nowhere does the evidence establish that even overt possession of the drug was similarly proscribed, or at least that such policy was clearly conveyed to the workforce—much less that covet possession was to be regarded in similar fashion.

In my view the summary dismissal of the appellant could only have been justified upon one of two alternative bases—

(a) that the appellant's conduct amounted to such a breach of his conditions of employment that termination was justified in accordance with the contract of employment.

Or (b) that it was such as to fall within the common law principles justifying summary dismissal.

The question arises as to whether it can satisfy either test...."

(Pg 664-666)

"...Applying it to the case at bar it at once becomes apparent that, upon the evidence, the mere covert possession of the drug was not a breach of the appellant's conditions of service—even if it be accepted that the provisions of the induction booklet were at some stage imported into his contract of employment either expressly or impliedly (a proposition which, itself, is highly debatable upon the evidence).

Equally it is difficult to see how, even upon the view of the learned magistrate's findings most favourable to the respondent, it can be said that the covert possession of the drug struck at an essential element in the contract of service....

...The fact of the matter was that, by its action in dismissing without even affording the appellant an opportunity of explaining himself, the respondent effectively denied basic justice to the appellant and the opportunity of knowing and assessing the full circumstances. I have previously adverted to the inherent dangers of this type of situation in Lumsden's Case (supra) and there drew attention to the discussion of principle set out in Parker v. Clifford Dunn Ltd. (1979) I.R.L.R. 56.

In any event I fail to see how, in the circumstances above recited, covert possession could, on any basis, have properly founded ordinary dismissal on notice, let alone summary dismissal....

...Mere covert possession of the drug could not, for example, in any sense be said to constitute a flagrant disregard of the Company policy...."

(pg 669-671)

The Judgement of Ollsen J. (Supra) was appealed to the Full Court of the Supreme Court of South Australia which dismissed the appeal (24 AILR No 19@414).

Applying the legal principles as stated by Olssen J. (Supra) and the standard of proof, on balance of probabilities, to the commission's findings (supra) results in the conclusion that it has simply not been demonstrated that Mr Deveny was a user of cannabis nor that he either had or was likely to attend for work under the influence of cannabis. Indeed, Mr Deveny had worked four (4) shifts after his conviction and thus the assumption made by Mr S. French that possession of cannabis leads to a reasonable conclusion that the possessor is a user of the drug and from that to the further conclusion that it is more probable than not, that this person had or would attend work under the influence of the drug and this could/would endanger his and other lives is not sustainable on the evidence now before the Commission in this case. In the result Mr M. Deveny was unfairly dismissed and an order should issue requiring his reinstatement in his former position with the respondent without loss of entitlements of any kind.

Appearances: Mr Hammond (of counsel) appeared for the applicant.

Mr T. Power (of counsel) and with him Mr G. Gishiabel (of counsel) appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Western Mining Corporation.

No. CR117 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

8 May 1996.

Order.

HAVING heard Mr J. Hammond (of counsel) on behalf of the applicant and Mr T. Power (of counsel) and with him Mr G. Gishiabel (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 Mr Marc Deveny be reinstated in his previous position with the respondent, as Diesel Operator at the St. Ives Junction Mine, Kambalda, W.A. without any loss of any entitlements under his contract of employment for the period from the termination of his employment to the 7th May 1996.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of WA (Inc)

and

Minister for Education.

No. CR 173 of 1995.

COMMISSIONER A.R. BEECH.

23 May 1996.

Reasons for Decision.

THE COMMISSIONER: This matter first came before the Commission in C 173 of 1995. The Commission issued Reasons for Decision on the 31st July 1995 finding that the matter before the Commission is an industrial matter and that it would be referred for hearing and determination pursuant to s.44(9) of the Act. ((1995) 75 WAIG 2631). On the 18th December 1995 the Full Bench dismissed an appeal against that decision ((1995) 76 WAIG 35). The matter was then referred for hearing and determination.

The matters referred for hearing and determination are:

"The applicant union seeks orders from the Commission concerning the conduct of an investigation pursuant to s.7C(2)(e) of the *Education Act 1928* into allegations made about Ms Katya Levy. The orders sought are set out below:

That the Commission provide an interpretation of s.7C of the *Education Act 1928* and in particular an interpretation of "an enquiry"; and

1. The investigation by Mr Rod Lowther (Lowther) into the conduct of Ms Levy pursuant to s.7C(2)(e) of the *Education Act 1928* "the investigation" be permanently stayed.
2. Lowther be disqualified from conducting the investigation.
3. Any person residing in Narrogin and the surrounding school district be disqualified from conducting the investigation.
4. The authorised person undertaking the investigation specify in respect of each of the complaints against Ms Levy how the alleged conduct amounts to misconduct as defined in s.7C(2)(e) of the Education Act 1928.
5. The Director General of the Ministry of Education only proceed with complaints where the alleged conduct of Ms Levy may amount to misconduct as defined in s.7C(2)(e).
6. The authorised person provide particulars in respect of each of the allegations of misconduct by Ms Levy as to the date, time, place of the alleged incident, the name of the complainant, student or students and such other particulars as will allow Ms Levy to answer the allegations against her.
7. A declaration or order that only complaints made pursuant to the procedure in Regulation 135 of the Education Act 1928 may be the subject of the investigation against Ms Levy pursuant to s.7C(2)(e).
8. In respect of the complaint by the parents of Jamie Stewart (Stewart) and the allegation by Stewart, a declaration or order that the investigation be stayed until the procedure in Regulation 135 of the Education Act 1928 is followed.
9. A declaration or order that Lowther be disqualified from conducting the investigation on the ground that there is reasonable apprehension of bias.
10. A declaration or order that the standard of proof to be applied in relation to the allegations by the complainant Stewart and Mr Keith Page is not simply on "the balance of probabilities" but, due to the serious nature of such allegations, close to "beyond a reasonable doubt".
11. A declaration or order that, in relation to the allegation by Stewart, natural justice requires a formal hearing of the matter at which the complainant

Stewart may be cross-examined, due to the serious nature of the allegation.

12. An order or declaration that the same investigator must investigate both the allegations and the response by Ms Levy and that Ms Levy be given an opportunity to provide written and oral submissions and to give evidence at the hearing of the matter in relation to the allegation by Stewart.
13. An order or declaration that the respondent do make formal request to the Commissioner of Police in order to interview the investigating police officers at Narrogin who investigation allegations of criminal conduct by Mr Keith Page.
14. An order or declaration that the interview referred to in (13) extend beyond whether or not Mr Page was charged with criminal offences.
15. An order or declaration that the respondent do provide particulars as to the basis upon which they allege that Ms Levy was the "person in charge" of the camp which took place in March 1995 and was thereby solely responsible for the conduct of students on that camp.

The respondent objects to and opposes the orders sought."

The Minister does not admit that there is any jurisdiction to deal with this matter. The conclusion that the jurisdiction exists to deal with this matter was reached by myself in the earlier Reasons for Decision. The Minister acknowledges that an appeal against that finding was dismissed with the Full Bench finding that there is jurisdiction (*supra*). Nothing further was put in these proceedings which requires me to add to my earlier conclusion. However the fact that the Commission has the jurisdiction to make orders of the type sought here does not mean that such orders should be granted. The orders may result in a delay which may itself frustrate the satisfactory conduct of the enquiry. The Full Bench (*supra* at p.39) noted that the Commission should be on its guard so as not to allow a teacher to lightly thwart an enquiry. Further, s.23B(1)(a) gives a teacher a right of appeal against any punishment for alleged misconduct imposed as a result of an enquiry under s.7C of the *Education Act, 1928*. Although that section is a recent amendment to the Act and it has not yet been the subject of any consideration, neither party suggests that it will not enable a complete re-hearing of the issue as did its predecessor in the repealed s.78(1)(b)(iii). An appeal would be able to canvas the issues raised in these proceedings. The existence of such an appeal is an argument against the Commission exercising its jurisdiction during the course of an enquiry. The union argues that where the calling of, or the conduct of, an enquiry is flawed a teacher should not have to wait to see if the eventual outcome of the flawed enquiry is adverse to the teacher, and then appeal the decision in order to overturn the result. In the process the teacher will have had an adverse finding made against him or her which, given that the calling of, or the conduct of, the enquiry was flawed, should be avoided. Whilst I can see the force of the argument it has validity only where the flaw alleged is so fundamental that the Commission could not in good conscience permit the enquiry to continue in that form or at all. Such a situation would arise rarely and be the exception rather than the rule.

It is convenient to deal with the orders sought in paragraphs 1, 4 and 7 first. These matters deal with s.7C of the *Education Act 1928* and the power of the Chief Executive Officer to cause an enquiry to be held by an authorised person. The Chief Executive Officer may only lawfully proceed with a s.7C enquiry where it appears to him that a teacher may be guilty of misconduct. Accordingly, he must be of that view before he causes an enquiry to be held (*SSTU v The Hon Minister for Education (re Willetton Primary School)* (1995) 76 WAIG 40 (FB)). The Chief Executive Officer is therefore required to go through a certain mental process. If, as a result of that process, the Chief Executive Officer reaches a decision that a teacher may be guilty of misconduct then he is obliged to cause an enquiry to be held. Alternatively, if the Chief Executive Officer does not reach a decision that a teacher may be guilty of misconduct, then he may not lawfully cause an enquiry to be held. The decision of the Chief Executive Officer will be apparent from the matters about which he appoints the authorised person to conduct an enquiry. If the information received by the Chief Executive Officer alleges a single act by a teacher then the decision to be made by the Chief Executive Officer is whether that single act could, if proved as fact, constitute misconduct on the part of the teacher concerned as that is defined in s.7C. If a number of alleged acts are drawn to the attention of the Chief Executive Officer the issue to be determined by him is whether those acts, taken together, could amount to that misconduct. It will only be in a case where it is unarguable that the matters referred to the authorised person could not possibly amount to misconduct as that is defined in s.7C that it can be shown that the decision to authorise an enquiry is invalid.

On the information before the Commission in this case the Principal of the Narrogin Senior High School wrote to the Executive Director of Schools of the Education Department on the 29th March 1995 (exhibit 1(9)). The letter refers to some attached notes, a "first letter" and a "second letter". These documents were not arranged consecutively in the exhibit book but I find that the attached notes are between pages 10 and 13 inclusive and pages 20 to 26 inclusive of exhibit 1. It is not clear to the Commission why the letter and its two attached notes were not arranged consecutively in the exhibit book. I do not pass any criticism of the applicant in this regard because I am unaware of the manner in which the contents of the exhibit book as a whole came into the possession of the applicant. I merely observe that any uncertainty in identifying the attached notes could easily have been resolved by the applicant seeking the production of the original copy of the Principal's letter for the purpose of production to the Commission.

A consideration of the Principal's letter and the two attached notes reveals that a number of allegations regarding Ms Levy's conduct were referred to the Executive Director of Schools. The decision to initiate the enquiry pursuant to s.7C was taken by the Executive Director (who is, as I understand it, the Chief Executive Officer for the purposes of the *Education Act 1928*) and it was not argued in these proceedings that the information referred to the Chief Executive Officer was not the same information as that contained in the Principal's letter. The union argues that some of the allegations, viewed individually, may not amount to misconduct. However, the task of the Chief Executive Officer is to decide whether, on all of the information before him, it appears that Ms Levy may be guilty of misconduct. In my view there is sufficient in the material contained in the Principal's letter for the Chief Executive Officer to have reached such a conclusion. I conclude therefore that it is not evident on the information before the Commission that the discretion of the Chief Executive Officer was not properly exercised.

The union seeks an order that the authorised person specify, in respect of each of the complaints against Ms Levy, how the alleged misconduct amounts to misconduct as defined in 7C(2)(e) of the *Education Act 1928*. However, the function of the authorised person is to investigate the matters referred to him or her by the Chief Executive Officer. It is not for the authorised person to do more than indicate to the teacher the matters which have been referred to him or her for investigation. As a matter of good practice, when the Chief Executive Officer advises the teacher of his decision to hold an enquiry he should advise the teacher of the allegations which led to the decision, as apparently happened in the *Willetton Primary School* case. In this matter however, the Director General merely advised Ms Levy that information had been received from the Principal of the Narrogin Senior High School concerning allegations of misconduct and that he was of the opinion that, if the allegations were proven, she may be guilty of misconduct under 7C(2)(e) (exhibit 1(7)). That letter did not inform Ms Levy of the nature of the allegations made against her. In this case it was the authorised person who subsequently advised Ms Levy of the subject of the enquiry. Two issues arise here, the first is that there is a delay between the advice of the enquiry and the advice of the subject matter of the enquiry. In this case the authorised person advised Ms Levy of an outline of the allegations on the 10th April 1995 (exhibit 1(19)). Given the potential seriousness of the determination of the Chief Executive Officer any delay would cause unnecessary anxiety on the part of a teacher who is not necessarily aware of the allegations which have been made. Secondly, it is for the Chief Executive Officer to determine what allegations are to be the subject of the enquiry and not the

authorised person. If the Chief Executive Officer advises the teacher of the alleged misconduct not only is there no delay, it is more difficult to suggest that the authorised person is determining what is to be the subject of the enquiry. The order sought will therefore not be granted.

The union has attacked the conduct of the enquiry because it has not followed the requirements set out in Regulation 135 of the *Education Act Regulations 1960*. The union argues that an enquiry under s.7C may only be commenced after the procedures in Regulation 135 have been followed. The authorities are against the union in this argument. A previous argument was dealt with by the Government School Teachers Tribunal in 1987 (67 WAIG 1028). The Tribunal examined the history of the Regulations prior to the insertion of s.7C into the *Education Act* in 1981. The Tribunal rejected the union's then submission that Regulation 135 needed to be complied with on the ground that, in the Tribunal's view, the Chief Executive Officer on that occasion was not dealing with a "complaint" as envisaged by that Regulation and thus was not obliged to pay any regard to that Regulation (at p.1031). The Tribunal was of the view that s.7C and Regulation 135 are separate and distinct and that either of them may be utilised by the Chief Executive Officer depending on the nature of the information raised against the teacher. The matter was raised before the Full Court of the Supreme Court of Western Australia in *Milentis v Minister for Education* (1993) 52 IR 85 as one of three questions posed to the Court. However, it was agreed between the parties to that matter that it was unnecessary for that question to be answered in the circumstances of that case (at pp.87, 93). In *Gudgeon's* case (op. cit.), where the matter that was before the Court was an application for a writ of *certiorari* to quash the decision of the Chief Executive Officer that Mr Gudgeon was guilty of misconduct pursuant to s.7C, Malcolm CJ commented that the procedure to be followed on an enquiry under s.7C(3) is not spelled out in any detail in the *Education Act 1928* or in the Regulations. He observed that there is a more detailed provision regarding complaints against a teacher in Regulation 135 of the Regulations but observed that the provision had no bearing on the matter then before the Court (decision p.18).

The union argues that Regulation 135 should be followed because it says that the provisions of Regulation 135 provide a greater protection for the teacher than is the case when an enquiry is conducted under s.7C. It therefore argues that it is a curious result to have greater protection for a teacher for an offence less than misconduct, whilst for misconduct, with its attendant risk of dismissal from employment, there is less protection for the teacher concerned. While I am not unsympathetic to the argument, the provisions of s.7C provide no support for interpreting it to that effect. Further, the position now is not different from the position prior to the insertion of s.7C into the *Education Act* in 1981. Matters of alleged misconduct were provided for in the then Regulation 134 of the *Education Act Regulations 1960*. The provisions of s.7C are not materially different in this regard from the provisions of Regulation 134. I do not see any greater significance in this regard from the fact that the enquiry is now an enquiry authorised by the Act rather than, as previously, by the Regulations. In my view the analysis of the Tribunal in 1978 of the changes to the Act and the Regulations which led to the material provisions of Regulation 134 being reflected in s.7C of the *Education Act 1928* was, with respect, the correct approach (and see too *Milentis v Minister for Education* (*op. cit*. per Ipp and Wallwork JJ at pp.88-91)). I have not been persuaded that the Tribunal was wrong in its earlier decision. I am therefore not of the opinion that an order should issue in the manner sought.

The orders sought in paragraphs 1, 2, 3 and 9 relate to the person conducting the enquiry. This person is Mr Lowther. The union seeks an order that Mr Lowther be disqualified on the ground that there is a reasonable apprehension of bias. The submission is based on two propositions. The first is that page one of Mr Lowther's confidential report states, by way of introduction, that he had been contacted by the Principal concerned on the 28th March and that Mr Lowther had attended a meeting between himself, the Principal and the Executive Director of Schools. The union regards this as some involvement by Mr Lowther in the decision whether or not the allegations were sufficient to constitute misconduct and which should warrant an enquiry under s.7C. The union also states that Mr Lowther failed to speak to the parent of a student who had contacted Mr Lowther regarding the allegations, and had omitted from his report a comment made by a former colleague of Ms Levy which was favourable to her. The union submits that these considerations lead to a reasonable apprehension that Mr Lowther is biased.

The principle to be applied in such matter is:

> "That a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it." (*R v Watson*; *ex parte Armstrong* (1976) 136 CLR 248 at pp258-263, as endorsed in *Livesey v New South Wales Bar Association* (1983) 151 CLR 288; and see too *Bradshaw v Kyle and Another*, Supreme Court of Western Australia, library No. 960063, 9 February 1996 unreported; *Carter v Drake and Others* (1992) 72 WAIG 736 and the authorities referred to therein.)

The only evidence before the Commission in relation to the union's first submission on this point is the passage from Mr Lowther's report acknowledging that he participated in a meeting concerning this issue prior to the calling of an enquiry. There is no detail of what Mr Lowther's participation at that meeting consisted. It was not a meeting at which the decision was taken to hold an enquiry because that decision can only be made by the Chief Executive Officer. The Commission is therefore faced with the submission that it is the mere participation in the meeting that raises the reasonable apprehension of bias. However, without more detail the union has done nothing more than raise a query. There is no evidence that Mr Lowther had any prior involvement with Ms Levy. He was not the person who reported Ms Levy's conduct to the Chief Executive Officer. He was not in the position of an accuser accusing Ms Levy of having done an act which might amount to misconduct (cf. *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509). Any prior relationship or dealings with individuals in the teaching profession which he has had is not necessarily a sufficient reason for disqualification from conducting the enquiry (*Laws v. Australian Broadcasting Tribunal* (1990) 170 CLR 70). Without more, it is doubtful that the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the enquiry. In this regard it is also important to note that Mr Lowther is not a judge or a decision maker. His letter of appointment (exhibit 1(8)) expressly states that Mr Lowther is not to make any judgments or recommendations in his report. His purpose is "to enquire and report rather than sit in judgement" (per Malcolm CJ in *Gudgeon's case op. cit*. at p.26). The decision maker in this matter is the Chief Executive Officer. For that reason it is, in my view, more difficult to establish that an authorised person is biased. I have been unable to conclude from the material before me that the mere participation Mr Lowther in the meeting raises a reasonable apprehension of bias.

The second matter is somewhat different. Evidence was presented to the Commission from Mrs Beresford who is a resident of Narrogin and has a daughter at the school. Her evidence is that once she became aware of the enquiry she rang Mr Lowther and informed him that she and her daughter "had information that could assist Ms Levy" (transcript p.13). Her evidence is that Mr Lowther responded that he had taken Mrs Beresford's name down and he would arrange an appointment with Mrs Beresford. Her further evidence is that no such appointment was made and that Mr Lowther did not, in fact, speak with Mrs Beresford nor her daughter. The union argues that the failure of Mr Lowther to contact Mrs Beresford, especially in circumstances where Mrs Beresford had information supportive of Ms Levy, supports the submission that there is a reasonable apprehension that Mr Lowther is biased. The answer to this submission depends, in my view, largely upon the information which Mrs Beresford and her daughter had. If Mr Lowther was a decision maker then the finding of a failure to take into account a relevant consideration can only be made out if it is a consideration which he is *bound* to take into account in making the decision: *Minister for Aboriginal Affairs v. Peko-Wallsend* (1985-1986) 162 CLR 24 per Mason J at 39. If Mrs Beresford's information was relevant to one of the allegations made against Ms Levy which was part of the

enquiry being conducted by Mr Lowther, then he erred in not taking the matter into consideration. The information must be of such importance that, if it is not considered, it could not be said that the matter had been properly investigated. However, if the information was of a more general nature and did not relate specifically to one of the terms of the enquiry then he did not err. There is, unfortunately, no evidence before the Commission to assist it in deciding this particular issue conclusively one way or the other. The Commission was not informed of what Mrs Beresford's information, or that of her daughter, consisted. The situation is complicated also by the further evidence of Mrs Beresford that, when she did not receive a communication from Mr Lowther, she wrote her information to him in a letter. A copy of the letter was not produced, it apparently having been deleted from Mrs Beresford's computer. The evidence therefore, is that such information that Mrs Beresford did have was sent to Mr Lowther. The Commission has examined Mr Lowther's report and is unable to find any reference to Mrs Beresford or her communication to him. That, however, may just as readily lead to the inference that the information was not relevant to the specific enquiries being conducted by Mr Lowther as to the inference that the information was excluded for reasons which, the union suggests, lead to a reasonable apprehension of bias. On balance it is not open to the Commission on this evidence to conclude that the failure to contact Mrs Beresford leads to a reasonable apprehension of bias.

The third matter relied upon by the union in this regard arises from the evidence of Mr Robinson. Mr Robinson gave evidence that he had been interviewed by Mr Lowther. The union particularly relied upon his evidence that a comment he had made to Mr Lowther regarding the favourable ability of Ms Levy to conduct a musical rehearsal, and to draw from that a very high level of response and a positive level of music making from the students, was not included in Mr Lowther's report. The union submits that this is a further factor which could lead to a reasonable apprehension of bias. In my view, for the submission to succeed the information must be of such importance that, if it is not considered, it could not be said that the allegations made against Ms Levy had been properly investigated. The comment omitted was of a general nature. An examination of the specific allegations relating to the music camp (exhibit 1(3)) reveals that Mr Robinson's general comment is not directly relevant to any of the issues raised in the report. As Mr Robinson's comment does not relate to any of those allegations it is difficult to conclude that there is a reasonable apprehension of bias in Mr Lowther for not including a comment which did not relate to one of the allegations. The submission does not succeed.

Further, I am not persuaded that a consideration of the three allegations together and Mr Lowther's report leads to the conclusion that the parties or the public might entertain a reasonable apprehension that Mr Lowther might not bring an impartial and unprejudiced mind to the inquiry. The report lists a number of allegations and Mr Lowther's findings in relation to those allegations. For example, the report is as follows for Specific Allegation 1:

> "Ms Levy conducted a private lesson in a teaching colleague's home despite advice to the contrary by school administration.
>
> *I have investigated this allegation and it has been supported by the student—Keith Page."*
>
> (Extract exhibit 1(2))

The above extract is reasonably typical of the allegations and Mr Lowther's finding in relation to them. His report does not include his interpretation of events. It merely states, in relation to each allegation, the extent to which the allegation is supported. In doing so he has made no evaluation of the evidence and merely forwarded the statements and interview transcripts. There is nothing to suggest that his report of these interviews is other than impartial. In those circumstances it is difficult to conclude that any apprehension of bias is reasonable in the relevant sense. The test of bias is objective (*Laws v. Australian Broadcasting Tribunal* op. cit. and cf. *Gudgeon's case* at p.26). If the issue to be considered by the decision maker was, for example, the overall conduct of the music camp and its overall effect upon the students, then the comment noted by Mr Robinson may well have been relevant. On the material before the Commission I am not able to conclude, in all of the circumstances, that any apprehension of bias is reasonable in the relevant sense. Accordingly the applications for orders in relation to Mr Lowther are dismissed.

Paragraph 10 seeks a declaration or order that the standard of proof to be applied in relation to the allegations of the complainant Stewart and Mr Keith Page be "close to "beyond a reasonable doubt" ". This and paragraph 11 raises a general issue regarding the conduct of the enquiry. The conduct of the enquiry is informal (s.7C(4)). However, beyond that the statute offers little guidance to the authorised person. In this case Mr Lowther's report merely states, in relation to each allegation, the extent to which it is supported by persons interviewed by him. That is quite consistent with the express statement in his letter of appointment referred to above. Other than stating as fact who supports the allegation, the report does not, of itself, find any facts. In relation to the allegation set out above the report would inform the Chief Executive Officer that the allegation that Ms Levy conducted a private lesson in a teaching colleague's home despite advice to the contrary by school administration is supported by the student concerned. The report does not conclude whether Mr Lowther believes or disbelieves the student interviewed. Further, Mr Lowther does not himself find as a fact whether Ms Levy had received advice to the contrary from the school administration. Of course it may be difficult for Mr Lowther to reach a concluded view given that he was not made aware by Ms Levy of her particular response. Similarly, the report in relation to "the allegations by the complainant Stewart and Mr Keith Page" does not conclude that the allegations were proven. Rather, it merely notes the extent to which the allegations are supported by persons who have been interviewed. Therefore in this case it will fall to the Chief Executive Officer to conclude whether the allegation is proven in all of the circumstances. The strength of evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what is sought to be proven. The strength of the evidence may need to be greater where what is sought to be proven is an allegation of serious misconduct. However that is not to say that a standard other than the balance of probabilities is to be applied. It is not apparent that the report is inaccurate as to its content. Whether it is sufficient for the purposes of the Chief Executive Officer is a matter for the Chief Executive Officer and not for the Commission in proceedings such as this.

Paragraph 11 seeks an order that the Commission should require that there be a formal hearing of the matter at which Mr Stewart would be able to be cross-examined. Generally there is no right to cross-examine adverse witnesses even where, as here, there is a serious issue at stake, because of the potential to frustrate and delay an investigation (*NCSC v. News Corporation* (1984) 156 CLR 296). In this case it also would appear to be directly contrary to the requirement of s.7C(4) that the investigation be informal. Therefore the orders sought in paragraphs 10 and 11 will not be made.

The order sought in paragraph 12 arises because the inquiry has now been completed, Mr Lowther has prepared his report but, although she has been given an opportunity to do so, and was willing to do so, Ms Levy has not yet responded. During the course of the proceedings it became apparent that the Minister was prepared to provide Ms Levy with an opportunity to respond to Mr Lowther's report by forwarding her response to the Chief Executive Officer (transcript p117).

Subsection 7C(4) is as follows:

> It is not necessary for an inquiry under subsection (3) to be formal but the teacher shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing an explanation in relation thereto.

It is apparent from the wording of s.7C(4) that giving the teacher an opportunity of furnishing an explanation will usually be part of the inquiry and not something which occurs after the inquiry. The investigation and the explanation of the teacher will usually be part of the one exercise which results in a report to the Chief Executive Officer. What is required is the giving of an opportunity of furnishing an explanation and a reasonable opportunity to prepare her case before she is called on to present it (*R v. Small Claims Tribunal; Ex parte Cameron* [1976] VR 427 at 432). In the ordinary course of events, if the opportunity given to a teacher to provide a response does not

also give a reasonable time to prepare the response, then a breach of natural justice would occur and the inquiry would go "off the rails". However, in this case the consideration of this matter must include Mr Lowther's report of the 19th May. As previously referred to, the report merely records who supports the allegations and contains no specific conclusions as to credibility. It is difficult to see, in this case, that Ms Levy making a response on the report directly to the Chief Executive Officer rather than to Mr Lowther will be to her disadvantage because it is the Chief Executive Officer who will have to decide whether the allegations are proven. The facts as found above do not lead to the conclusion that the flaw alleged by the union is so fundamental that the Commission could not in good conscience permit the enquiry to continue in that form or at all. The order sought will not be granted.

The orders sought in paragraphs 13 and 14 were not pursued and will not be granted.

It is apparent that the order sought in paragraph 15 is no longer appropriate. If Ms Levy was not the "person in charge" of the camp then to the extent that Mr Lowthers's report assumes that as a fact then his report is not accurate. That is a matter to which Ms Levy is now in a position to respond directly to the Chief Executive Officer.

For all of the above reasons the application will be dismissed.

Order accordingly.

Appearances: Ms H. Prince (of counsel) on behalf of the applicant.

Mr R. Hooker (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of WA (Inc)
and
Minister for Education.
No. CR 173 of 1995.

COMMISSIONER A.R. BEECH.

23 May 1996.

Order.

HAVING heard Ms H. Prince (of counsel) on behalf of the applicant and Mr R. Hooker (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 dismissed.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

UNIONS—
Application for alteration of rules—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.62

In the matter of an application by Electrical Contractors Association of WA (Inc) for alteration of registered rules.

27 of 1996.

PETER CHARLES WINTER
A/DEPUTY REGISTRAR.

19 March 1996.

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 rules 5, 7, 8, 25 and 35 of the registered rules of the applicant union in the terms of the application as filed on 10 January 1996.

P. WINTER,
A/Deputy Registrar.

CONFERENCES—Notation of—

PARTIES		NUMBER - COMMISSIONER	DATE	MATTER	RESULT
Australian Workers' Union	Western Mining Corporation	Halliwell S.C. C117/1996	16/04/96 18/04/96	Dismissal	Concluded
Australian Railways Union	Western Australian Government Railways Commission	Scott C. C474/1994	13/12/95	Release of Report	Discontinued
Australian Railways Union	Western Australian Government Railways Commission	Scott C. C103/1995	13/12/95	Structural Efficiency	Discontinued
Australian Railways Union	Western Australian Government Railways Commission	Scott C. C47/1996	28/02/96	Car Driving Duties	Discontinued
Australian Workers' Union	Bulup—Kulung	Beech C. C80/1996	25/03/96	Unfair dismissal	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	CBI Constructors Pty Ltd	Beech C. C56/1996	01/03/96	Employment Conditions	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Omnibus Service Trust	Halliwell S.C C112/1996	18/04/96	Non-Payment of Overtime	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Resen Pty Ltd t/a Hermanns Karratha	Halliwell S.C C134/1996	30/05/96	E.B.A. Negotiations	Concluded

PARTIES		NUMBER - COMMISSIONER	DATE	MATTER	RESULT
Breweries and Bottleyards Employees' Industrial Union of Workers and Others	Matilda Bay Brewing Co. Ltd	Gifford C. C387/1995	03/01/96	EBA Negotiations	Concluded
Builders, Labourers, Painters and Plasterers Union	Frank Spina & Co.	Beech C. C114/1996	08/05/96	Time Records Request	Concluded
Builders, Labourers, Painters and Plasterers Union	Bryan Burns	Scott C. C113/1996	N/A	Time Records Request	Concluded
Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	BHP Sheet and Coil Products Division	Halliwell S.C C86/1996	04/04/96 16/05/96	Compulsory Helmet Wearing	Referred
Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	Kone Elevators	Halliwell S.C C59/1996	23/02/96	Industrial Dispute	Discontinued
Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	CSR Limited	Halliwell S.C C133/1996	N/A	Superannuation	Concluded
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union	Lampson Australia Pty Ltd	Beech C. C121/1996		Award Coverage	Concluded
Electrical, Electronics, Foundry and Engineering Union	W.A. Department of Training	Halliwell S.C. C220/1995	07/08/96	Reclassification	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union and Another	Delron Cleaning Pty Ltd	Beech C. C136/1996	20/05/96	Refused Annual Leave	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union and Another	SCM Chemicals Ltd	Gifford C. C108/1995	02/05/95 23/05/95 29/05/95 23/06/95 07/07/95 25/07/95 15/08/95 21/09/95	E.B.A. Negotiations	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union and Another	Dorm Nominees P/L t/a Gentle Jungle Child Care Centre	Gifford C. C285/1995	N/A	Conference referred re: dismissal	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union and Another	Swan View Child Care Centre	Gifford C. CR363/1995	N/A	Dismissal	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union and Another	Education Department of W.A.	Scott C. C167/1995	26/06/95	Refusal to appoint a head cleaner	Discontinued
Meat Industry Employees' Union	Alkafon Pty Ltd t/a Cheap Foods Kalamunda	Halliwell S.C. C126/1996	N/A	Conditions of Employment	Concluded
Shop, Distributive and Allied Employees' Association	The Discovery Clothing Co. P/L	Gifford C. C71/1996	25/03/96	Redundancy Package	Discontinued
Shop, Distributive and Allied Employees' Association	Australian Liquor Marketers	Gifford C. C94/1996	26/03/96	Industrial action	Concluded

CORRECTIONS—

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

Anodisers W.A. and Others.

No. 298 of 1996.

Metal Trades (General) Award 1966 No. 13 of 1965
No. 13 of 1965.

SENIOR COMMISSIONER G.G. HALLIWELL.

7 June 1996.

Correction Order.

WHEREAS an error occurred in Order No. 298 of 1996 dated 4 June, 1996 (unreported), the following correction is made:

In Instruction No. 6 delete the words "in subclause (1)" and replace with "in subclause (2)".

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

IN THE MATTER of an application for a reduction of time in which an answering Statement in Application No. 802 of 1996 is to be filed in the Commission.

No. 803 of 1996.

COMMISSIONER A.R. BEECH.

7 June 1996.

Order.

WHEREAS Mr George Williams has filed Application No 802 of 1996 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 Mr George Williams 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 803 of 1996;

AND WHEREAS the Commission has contacted the parties in relation to this application, 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 George Williams shall forthwith serve a copy of this Order on Cadnet (Perth) Pty Ltd.

(2) THAT a Notice of Answer and Counterproposal to the claim in Application No. 802 of 1996, lodged with the Commission on the 31st day of May 1996, shall be lodged with the Commission and a copy thereof served on Mr George Williams within 7 days from the date of service of this Order.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

JOINDER/CONCURRENCE OF PARTIES—
Application for—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Boddi Clean and Others

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. 680 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

21 May 1996.

Order.

HAVING heard Mr A. Smetana on behalf of persons seeking joinder as parties to this application and Mr N. Whitehead on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, 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 persons listed in the schedule hereunder be and are hereby joined as parties to Application No. 330 of 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Boddi Clean
Dee Logistic Services Pty Ltd
Delron Cleaning Pty Ltd

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bunnings Building Supplies Pty Ltd t/a Bunnings and Others

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. 681 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

21 May 1996.

Order.

HAVING heard Mr A. Smetana on behalf of persons seeking joinder as parties to this application and Mr N. Whitehead on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, 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 persons listed in the schedule hereunder be and are hereby joined as parties to Application No. 326 of 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Bunnings Building Supplies Pty Ltd trading as Bunnings
Chrissella Holdings trading as Granny's Pies and Cakes
Clelands Cold Stores (Aust) Pty Ltd
Coventry Group Ltd
Dale Cottages (Inc)
Fortescue Bus Service Pty Ltd
Fosseys (Australia) Pty Ltd trading as Coles Fosseys
Marlows Limited trading as Marlows Auto Parts and Accessories
Quality Bakers Australia Ltd trading as Buttercup Bakeries
Ravensthorpe Building Supplies
Swan Settlers Ltd
Westrac Equipment Pty Ltd

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Perth Diocesan Trustees

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. 679 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

21 May 1996.

Order.

HAVING heard Mr A. Smetana on behalf of persons seeking joinder as party to this application and Mr N. Whitehead on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, 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 persons listed in the schedule hereunder be and are hereby joined as party to Application No. 328 of 1996.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

Perth Diocesan Trustees

NOTICES—
Appointments—

APPOINTMENT

RAILWAY CLASSIFICATION BOARD

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to section 80 O(7) of the Industrial Relations Act, 1979, having consulted with the Minister and the Union, hereby terminate the appointment of Commissioner C.B. Parks and appoint Commissioner S.A. Cawley to be Deputy Chairperson for a period of one year with effect from the 29th day of May, 1996.

Dated the 29th day of May, 1996.

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

AWARDS/AGREEMENTS—
Consolidation by Registrar—

LESLIE SALT AWARD No. A 31 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 28th day of May, 1996.

J. CARRIGG,
Registrar.

Leslie Salt Co. Award—1982

1.—TITLE

This Award shall be known as the Leslie Salt Co. Award—1982, and replaces the Industrial Agreements No. 17 of 1978 and No. 18 of 1978.

1A.—STATEMENT OF PRINCIPLES—MARCH 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 21st day of March, 1996 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 matters No. 985 of 1994 and No. 1164 of 1995.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles—March 1996
2. Arrangement
3. Definitions
4. Area and Scope
5. Term
6. Contract of Service
7. Temporary Workers
8. Mixed Functions
9. Hours
10. Overtime
11. Shift Work
12. Essential Services
13. Cyclone Shutdown
14. Holidays
15. Special Leave
16. Annual Leave
17. Long Service Leave
18. Sick Leave
19. Leave for Union Training
20. Training and Promotion
21. Wages and Allowances
22. District and Site Allowances
23. Service Payments
24. Special Rates and Provisions
25. Time and Wages Record
26. Payment of Wages
27. Posting of Notices
28. Union Officials
29. Industrial Relations Procedure
30. Board of Reference
31. Travelling to and from Work
32. Redundancy
33. Utilization of Contractors
34. Apprentices

Schedule 1—Application of 38-Hour Week Applicant

3.—DEFINITIONS

(1) "EMPLOYER" means Leslie Salt Co., Incorporated in Delaware, U.S.A., (Limited Liability).

(2) "LEADING HAND" means a worker who is placed by the employer in charge of other workers.

(3) "PROCESS" means the operation from the intake of seawater through to and including the cast-off of ships.

(4) "SHOP STEWARD" means a worker appointed as such who is a member of a Union party to this Award and whose appointment has been notified in writing by the Union to the employer.

(5) "TRADESMAN" means a worker who in the course of his employment works for drawings or prints, or makes precision measurements or applies general trade experience but does not include an Apprentice.

(6) "UNION" means a Union party to this Award.

(7) "WEEK" means in the case of a Day Worker or Shift Worker the time span in which the 38 ordinary hours of work would fall.

(8) "EXPERIENCED TRADESMAN" means a Mechanical or Electrical Tradesman having had not less than 1 year on the job experience in the employment of Leslie Salt Co.

4.—AREA AND SCOPE

(1) This Award shall apply to members of the applicant Unions in the classifications mentioned in this Award and in the area occupied and operated upon by Leslie Salt Co.

(2) This Award is restricted in its operations to the area of the State between 18th and 26th parallel of south latitude.

5.—TERM

(1) This Award shall operate from the 21st day of September, 1982, until the 15th day of July, 1984, provided that, except as elsewhere prescribed in this award, the rates and conditions contained herein shall take effect from the 16th day of July, 1982. During its period of operation the employer shall adjust the wages in accordance with the indexation formula outlined in Clause 21(7) of the Award.

(2) If accord has not been reached by 15th July, 1984, on the renewal of the Award the provisions of this Award shall continue until such time as it is replaced by a new Award.

(3) The Company and the Unions should commence negotiations 1 month before the expiration of this Award.

6.—CONTRACT OF SERVICE

(1) (a) A contract of service to which this Award applies may be terminated in accordance with the provisions of this clause and not otherwise but this subclause does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed nor to affect an employer's right to dismiss a worker without notice for misconduct which would justify dismissal.

(b) A worker who is validly dismissed without notice shall be paid entitlements due upto the time of dismissal only.

(2) Subject to the provisions of this clause, a party to a contract of service may during ordinary working hours, give to the other party the appropriate period of notice of termination of the contract prescribed in subclause (5) of this clause and the contract terminates when that period expires.

(3) In lieu of giving the notice referred to in subclause (2) of this clause, an employer may pay the worker concerned his ordinary wages for the period of notice to which he would otherwise be entitled.

(4) (a) Where a worker leaves his employment—

(i) without giving the notice referred to in subclause (2) of this clause; or

(ii) having given such notice, before the notice expires,

he forfeits his entitlement to any monies owing to him under this Award except to the extent that those monies 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 purposes of this Award be deemed to have terminated at the time at which the worker was last ready, willing and available for work during ordinary hours under the contract; and

(ii) the provisions of subclause (2) of this clause shall be deemed to have been complied with if the worker pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the worker's ordinary wages for the period of notice which should have been given.

(c) Once notice has been given by the employer, the employer shall grant the worker, if requested at least during the worker's previous shift, leave of absence without pay for one day to enable the employee to look for alternative employment.

(5) The period of notice referred to in subclause (2) of this clause is—

(a) During the first month of employment under the contract, 1 day; and

(b) After the first month of such employment, 1 week.

(6) (a) On the first day of engagement a temporary worker shall be notified in writing by his employer or by the employer's representative the expected duration of his employment.

(b) The probationary period for all new workers is 1 month. However, with the agreement of the employee, the Union representative and the employer, the probationary period may be extended upto a total of 3 months.

(7) The employer shall be under no obligation to pay for any day not worked upon which the worker is required to present himself for duty, except where this Award makes specific provisions for payment for such absence.

(8) (a) The employer is entitled to deduct payment for any day upon which a worker (including an apprentice) cannot be usefully employed because of a strike by any of the unions party to this Award or by any other association or union.

(b) The provisions of paragraph (a) of this subclause also apply where the worker cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union or unions concerned so agree or, in the event of disagreement, the Board of Reference so determines.

(c) Where the stoppage of work has resulted from a breakdown of the employer's machinery the Board of Reference, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

(9) A worker who, without notification to and the approval of his employer, is absent from work for 5 consecutive days shall be deemed to have abandoned his employment unless and until, in the circumstances of any particular case, the employer otherwise agrees, or in the event of dispute the Commission otherwise determines, but this subclause does not affect the employer's right to dismissal referred to in subclause (2).

(10) No employee shall be compelled to operate any machine which the employee does not believe he is competent to operate.

(11) A worker shall transfer from day work to shift work and from shift work to day work if and when required by the employer to do so. The employer shall give at least 2 days (48 hours) notice of the intention to do so, excluding Saturdays and Sundays,

(12) It is hereby expressly agreed and declared that no contract of service shall be made between the employer and any worker which contains any term or condition which is inconsistent with or contrary to the provisions of this Award.

7.—TEMPORARY WORKERS

(1) The employer may by agreement with the relevant Union representative employ workers as temporary workers provided that such period of employment shall be in excess of four weeks but shall not exceed four months.

(2) Notice of termination may be given by the employer at any time after the first month and such notice shall be in accordance with clause 6(5) of this Award.

(3) A temporary worker shall be entitled pro rata to all entitlements in this Award relating to permanent employees in addition to the amount set out in clause 21(3).

(4) (a) A temporary worker may be transferred to permanent employment at any time during the currency of his employment if agreed to between the employer and the Union.

(b) At such time as the transfer is effective the additional rate payable under clause 21(3) will cease.

8.—MIXED FUNCTIONS

(1) A worker engaged during ordinary hours and/or overtime on duties carrying a higher rate of pay than his ordinary classification, shall be paid the higher rate for the time so engaged, but if so engaged for a total of 2 hours or more, he shall be paid the higher rate for the whole day or shift.

(2) A worker engaged in a higher classification continuously for more than 18 weeks shall be reclassified to that classification.

9.—HOURS

(1) Day Workers:

(a) The ordinary hours of work for day workers—

(i) shall be an average of 38 hours per week on the basis of 19 days worked in each 28 day cycle with the 20th day being an unpaid Allocated Day Off (ADO);

(ii) shall be worked in five days of not more than 8 hours per day, Monday to Friday inclusive excepting any ADO.

(iii) shall, subject to the provisions of paragraph (b), start no earlier than 7.00 a.m. and end no later than 5.30 p.m. each day;

(iv) shall be worked consecutively each day except for an unpaid meal interval which shall be 30 minutes.

(b) Starting times prior to 7.00 a.m. and finishing times later that 5.30 p.m. may be fixed by agreement between the employer and the and the workers concerned or, failing such agreement, may be determined by the Commission.

(c) The first 8 hours worked between 7.00 a.m. and 5.30 p.m. shall be deemed to be ordinary hours.

(2) Shift Workers:

(a) The ordinary hours of work of shift workers-

(i) shall be an average of 38 hours per week on the basis of 19 days worked in each 28 day cycle with the 20th day being an unpaid Allocated Day Off (ADO);

(ii) shall be worked in shifts of 8 hours per day, Monday to Friday inclusive, except an ADO.

(iii) shall be worked consecutively each day except for an unpaid meal interval which shall be 30 minutes;

(b) The first 8 hours worked between 7.00 a.m. and 5.30 p.m. on Day Shift and between 3.30 p.m. and midnight on Afternoon Shift shall be deemed to be ordinary hours.

(3) All Workers:

(a) Subject to the provisions of this paragraph, one smoko/rest period of 15 minutes shall be allowed. The smoko/rest period shall be taken at a scheduled time or at such time as is mutually convenient (for example—during a break in the operation) and the time taken for such smoko/rest period shall be kept as close as practicable to 15 minutes, which extra time is time taken to travel to and from the mess.

(b) The smoko/rest periods shall count as time worked without deduction of pay.

(c) Where a worker commences work at 1800 hours and the mid-shift meal break is taken at 2030 hours, or thereabouts, no smoko/rest period shall be taken during the first part of the shift.

(d) An additional 15 minutes smoko shall be allowed when 12-hour shifts are worked.

10.—OVERTIME

(1) All Workers:

(a) All time worked outside or in excess of 8 hours each day, Monday to Friday inclusive, except where it is otherwise expressly prescribed, shall be paid at the rate of double time.

(b) Work done on any day prescribed as a holiday under this Award shall be paid for at the rate of double time in addition to the prescription of clause 14(6)..

(c) In computing overtime each day shall stand alone but when a worker works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this clause.

(2) All Workers:

(a) (i) A worker who, after leaving the job, returns by direction of his employer to work overtime is deemed to have been recalled whether notified before or after leaving the job, of the requirement to work.

(ii) A worker recalled to work overtime shall be paid for at least 4 hours at the appropriate rate for each such occasion but except where subparagraph (iii) applies, not more than once in respect of any period of time.

(iii) Where a worker works less than 4 hours overtime on a recall and the overtime is, except for a reasonable meal break, continuous with the commencement of his ordinary hours of work, he shall be paid for the recall in accordance with subparagraph (ii) without diminution of the payment due to him for his ordinary hours of work, but this subparagraph does not apply where the worker was notified of the requirement to work before leaving the job on the previous day or earlier.

(iv) Unless unforeseen circumstances arise, a worker recalled for a specific job shall not be required to work for the minimum period applicable to him if the job is completed in less time than that minimum period.

(v) The provisions of this paragraph do not apply—

(aa) where it is customary for a worker to return to perform a specific job outside his ordinary hours of work; or

(bb) where the overtime worked is, except for a reasonable meal break, continuous with the completion of the ordinary hours of work.

(b) (i) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that workers have at least 12 consecutive hours off duty between the work of the successive days such time off shall be inclusive of travelling time.

(ii) Where the time worked by a worker on a recall is less than a minimum period applicable to him under paragraph (a) the time so worked shall be regarded as overtime for the purposes of this paragraph, but this subparagraph does not apply with respect to recalls within the 12 hour period immediately preceding the time at which the worker is to commence his ordinary hours of work if he is recalled on two or more occasions within that period and the overtime worked by him on the last of such occasions ends before that ordinary commencing time.

(iii) A worker who by reason of working overtime has not had at least 12 consecutive hours off duty after the termination of his ordinary hours of work on any day shall not, unless specifically directed to do so by his employer, commence his ordinary hours of work on the next day until he has had 12 consecutive hours off duty.

(iv) Where such a worker, pursuant to a specific direction by his employer, works in ordinary hours on any day without having had 12 consecutive hours off duty since the termination of his ordinary hours of work on the preceding day, he shall be paid at the rate of double time for the ordinary hours so worked and shall, at the conclusion of such work, be given 12 consecutive hours off duty.

(v) (aa) Where pursuant to the preceding provisions of this paragraph a worker is given 12 consecutive hours off duty, any ordinary hours of work falling

within that period shall be deemed to be time worked at ordinary time rate.

(bb) If the ordinary hours of work falling outside that rest period are 2 hours or less the worker is not required to attend work but will be paid for those ordinary hours not worked.

(c) Where a worker is called into work on a Sunday or holiday as defined in clause 14(1) immediately preceding an ordinary working day, he shall, wherever reasonably practicable, be given 12 consecutive hours off duty before his usual starting time on the next day. If this is not practicable, then the provisions of paragraph (b)(iii) and (iv) shall apply mutatis mutandis. Provided that overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this subclause when the actual time worked is less than 4 hours on such recall or on each such recalls.

(d) Where a shift is worked by arrangement between the workers themselves and a worker does not have a break of at least twelve consecutive hours' break no penalty shall accrue.

(e) Where a worker undertakes to work overtime for a specific period or for the completion of a specified job he shall work in accordance with his undertaking unless prevented from doing so by illness, accident or injury.

(f) A worker shall not be compelled to work for more than 6 hours without a break for a meal. Work carried out beyond the 6 hours shall be paid at penalty rates until the meal break is taken.

(g) When a worker is required to hold himself in readiness for a call to work after ordinary hours he shall be paid at ordinary rates for the time or period that worker has been advised to so hold himself in readiness.

(h) Subject to the provisions of paragraph (i) of this subclause a worker required to work overtime for more than 2 hours shall be supplied with a meal by the employer or, at the worker's option, be paid $10 for a meal. If overtime continues the worker shall be supplied with additional meals or, at the worker's option, be paid $10 for such meals after each additional 6 hours of overtime worked.

(i) The provisions of paragraph (h) of this subclause do not apply in respect of any period of overtime for which the worker has been notified on the previous day or earlier that he shall be required.

(j) The provisions of this subclause do not operate so as to require payment of more than double time rates, or double time plus a day in lieu to be added to annual leave for a holiday prescribed in this Award.

(k) Employees engaged on twelve hour shifts shall be paid travelling time in excess of the shift period calculated at one hour per shift for residents of South Hedland and half an hour per shift for residents of Port Hedland

Such time shall be paid at ordinary time rates.

11.—SHIFT WORK

(1) The provisions of this clause apply to shift work.

(2) Subject to the provisions of subclause (3) of this clause, an employer may work his establishment on shifts but before doing so shall give at least 2 days (48 hours) notice in writing of his intention to the Union and worker or workers concerned and of the intended starting and finishing times of scheduled working hours and ordinary hours of the respective shifts.

(3) (a) Where any particular process is carried out on shifts other than day shift, and less than 5 consecutive such shifts are worked on that process, then workers employed on such shifts shall be paid at overtime rates.

(b) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work on the process is not carried out on a Saturday or Sunday or on any holiday or allocated day off.

(4) Where a shift commences at or after 11.00 p.m. on any day, the whole of that shift shall be deemed, for the purposes of this Award to have been worked on the following day.

(5) A shift worker shall, in addition to his ordinary rate be paid $1.46 from 4th October 1988 and $1.52 from 4th April 1989 for all time worked on afternoon shift to a maximum of nine hours per shift.

(6) (a) When shiploading on afternoon shift is finished and workers leave for home after 0100 hours they shall recommence work at 1800 hours the same day without loss of pay.

(b) In the case of paragraph (b) of this subclause the Day Shift which commenced at 0600 hours shall work through until the next following 1800 hours.

(7) Shift changeover shall take place between 1800 hours Saturday to 0600 hours Sunday but may take place at any time between 0600 hours Saturday and 0600 hours Monday.

(8) No work shall be scheduled between 1800 hours Saturday and 0600 hours Sunday, and only emergency work shall be carried out between these hours.

12.—ESSENTIAL SERVICES

(1) During any dispute, essential services shall be provided by the Union party to this Award for water and brine movement related to the growing of salt. The labour requested by the employer for essential services shall be provided by the Union on a rostered basis. Persons so rostered must be current employees and fully qualified for the work assigned.

(2) So long as essential and emergency services are provided, no persons, whether from inside or outside the Company and whether Salaried or Wages, shall be permitted to do work normally done exclusively by Leslie Salt Company personnel who are members of a Union party this award.

13.—CYCLONE SHUTDOWN

(a) Subject to the provisions of this clause, and notwithstanding the provisions of clause 6(1) to 6(8), where a stand-down occurs due to a cyclone, each worker shall be entitled to payment of ordinary hours which fall between the time of stand-down by the employer and until the "all clear" is posted.

(b) Following the "all clear" each worker is required to resume duty on his next rostered shift unless the employer notifies him otherwise and a worker who does not present himself for work at such time is not entitled to any payment referred to in paragraph (a) above, except in the case of obvious personal hardship due to the effects of the cyclone.

(c) A worker who, on any day during the cyclone shutdown, is required for work and is requested to do so by his employer and is not willing or available to work when so requested, except in the case of obvious personal hardship due to the effects of the cyclone, is not entitled to payment for that day.

(d) A worker who is required to work during a cyclone stand-down shall be paid at double time rate or rates applicable to him for time actually worked.

14.—HOLIDAYS

(1) The following days or the days observed in lieu thereof shall be allowed as holidays without loss of pay—namely: New Year's Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Port Hedland Cup Day, Queen'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.

(2) When any of the days mentioned in subclause (1) falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, and where Boxing Day falls on a Sunday or Monday it shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) Any worker who absents himself from work on the working day following a day observed as a holiday pursuant to this clause is not entitled to payment for that holiday unless he satisfies his employer that he had a reasonable excuse for his absence.

(4) No worker shall be compelled to work on a day observed as a holiday pursuant to this clause unless he is required for the provision of essential services.

(5) For the purposes of subclause (4) above, shiploading may be conducted on all holidays with the exception of Christmas Day and New Year's Day unless previously agreed to between the employer and the workers. Liaison between the employer and workers shall take place to ensure ships scheduled on holidays shall be loaded.

(6) Any worker who is required to, and does, work on a holiday shall be entitled to a day off in lieu of the day worked, at a time mutually convenient to the worker and to the employer. The day taken in lieu of the holiday which was worked may be added to the next annual holiday of the worker but such day does not attract the annual holiday loading of 25 percent.

15.—SPECIAL LEAVE

(1) Compassionate Leave :

(a) On application to the employer up to 10 days leave may be granted to the worker for compassionate reasons, and such leave shall be without deduction of pay for the period not exceeding the number of ordinary hours normally worked during the period of this leave.

(b) Payment in respect of compassionate leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with any shift roster or on Long Service Leave, annual leave, sick leave, Workers' Compensation, leave without pay or on a holiday.

(c) For the purpose of this clause the pay of a worker employed on shift work shall be deemed to include any usual shift allowance.

(d) Where situations occur requiring an absence in excess of that allowed under paragraph (a) and there is no other leave accrued, special leave without pay shall not be refused.

(e) The periods of leave entitlement under this subclause are subject to sufficient proof of the necessity being produced to the employer by the worker. Should special unpaid leave be granted, such unpaid leave shall not break continuity of service.

(2) Special Leave :

(a) Provided there is no other leave accrued, special leave without pay should not be refused, provided that sufficient proof of the necessity is produced to the employer by the worker.

(b) Should special unpaid leave be granted, such unpaid leave shall not break continuity of service.

(3) Sports Leave :

Sports representation leave, unpaid, shall be granted with the agreement of the employer for the purpose of the worker attending a sports championship meeting as a team participant. Such leave up to 5 days per worker per year shall not break the worker's continuity of service with the employer.

(4) Jury Service:

To compensate him for any loss he would otherwise suffer, a worker who is required by statute to attend for Jury Service shall be paid by the employer an amount equal to the difference between the payment he receives for Jury Service and the wages he would have received under this award for the ordinary hours he would otherwise have worked.

16.—ANNUAL LEAVE

(1) (a) (i) Except as hereinafter provided a period of 5 consecutive weeks leave with payment as prescribed in paragraph (b) hereof shall be allowed annually to a worker after a period of 12 months continuous service with that employer. This period of five consecutive weeks leave represents twenty five normal working days and excludes an ADO.

(ii) Any ADO falling within an approved period of annual leave is not rescheduled and does not count as annual leave taken.

(b) (i) A worker before going on leave shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period.

(ii) Subject to paragraph (c) hereof a worker shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following—

(aa) The rate payable pursuant to clause 21 of this Award;

(bb) Subject to paragraph (c) hereof the rate payable for work in ordinary time pursuant to clause 11 of this Award.

(c) During the period of annual leave a worker shall receive a loading of 25 percent calculated on the rate of wages prescribed by paragraph (b) hereof.

Provided that where the worker would have received shift loadings pursuant to clause 11, 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 25 percent, then the shift loadings shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the 25 percent loading.

Provided, further, that if the shift loadings would have entitled him to a lesser amount than the loading of 25 percent then such loadings of 25 percent shall be added to the rate of wages prescribed by paragraph (b) but not including paragraph (b)(ii)(bb) hereof in lieu of the shift loadings.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(2) If any Award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, that day shall be added to that period of leave.

(3) (a) If after one month's continuous service an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, he shall be paid at the rate prescribed by subclause (1)(b) of this Clause one fifty-second of any annual leave entitlement accrued but not taken for each completed week of continuous service with the employer.

(b) In addition to any payment to which he may be entitled under paragraph (a) of this subclause a worker whose employment terminates after he has completed a 12 months qualifying period and who has not been allowed the leave prescribed under this Award in respect of that qualifying period shall be given payment in lieu of that leave or, in the case to which subclause (6) of this clause applies, in lieu of so much of that leave as has not been allowed, unless—

(i) he 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.

(4) Any time in respect of which a worker is absent from work except time for which he is entitled to claim sick pay, or worker's compensation 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.

(5) In special circumstances and by mutual consent of the employer and the worker, annual leave may be taken in not more than 2 periods but neither of such periods shall be less than 1 week.

(6) (a) Subject to the provisions of this subclause a worker who, during a period of annual leave, is confined to hospital for 7 consecutive days or more as a result of personal sickness or injury is entitled to claim payment under Clause 18 in lieu of payment for annual leave for all or part of the period of confinement.

(b) A claim under paragraph (a)—

(i) may not exceed the period of sick leave to which the worker was then entitled;

(ii) shall be made within 14 days of the worker resuming work after his leave;

(iii) shall be supported by a certificate from a qualified medical practitioner as to the period of hospitalization;

(iv) shall not include the 25 percent annual leave loading;

(v) shall, if the foregoing conditions are satisfied, be granted.

(c) Where a worker is paid for a period of confinement under this subclause he is entitled to a period of annual leave equivalent to the ordinary hours so paid which shall be taken no later than with his next annual leave or paid for if his service ends before that leave is taken.

(7) (a) Subject to the provisions of paragraph (b) a worker who desires to accumulate annual leave for a period of 2 years may do so if he so notifies his employer in writing prior to the commencement of the second 12-month qualifying period.

(b) The maximum amount of leave that may be carried forward under paragraph (a) is 5 weeks and no more than 10 weeks leave may be taken at any one time.

(8) (a) An employee who proceeds on annual leave is entitled to holiday leave travel assistance in accordance with and subject to the following provisions of this subclause, but only if his contract of employment continues or is continued after the leave is completed.

(b) (i) Subject to the provision of (a) of this subclause an employee who proceeds on annual leave for one week or more shall be entitled to holiday travel assistance equivalent to the cost of an economy class return air fare to Perth for each complete year provided such assistance may only be claimed in respect of travel to and from the employee's place of engagement in that year and further provided that the assistance may only be claimed in the form of an air ticket or reimbursement of actual travel costs up to the value of a return economy class air ticket.

(ii) Where the employee is a married employee whose spouse and dependants reside with him/her in the area of his/her employment, the spouse and each dependant, in their own independent right, shall be entitled to holiday travel assistance, in respect of any one completed year of the employee, of the equivalent cost at the date of travel, of one return air fare each. Dependants over three years and under 16 years, unless the dependant over 16 years is a bona fide full time student, shall be entitled to these provisions. Provided neither the spouse nor dependants receive travel assistance from any other employer.

(c) (i) Where an employee takes leave in advance, after a minimum of six months service in that leave year, the employee may claim up to 50 percent of the entitlement for that year.

(ii) Where an employee has completed six months service in any leave year, his dependants as defined in subclause (8)(b)(ii) may claim up to 50 percent of the entitlement for that year.

(d) An employee is not entitled to the benefits of this subclause both as an employee and as the spouse of an employee.

(e) Where an employee who has been granted travel assistance under this subclause in respect of a period of annual leave fails to resume work with the employer upon completion of that leave, the employer may deduct from any moneys due to the employee the cost of such assistance unless he is satisfied that there were good and sufficient reasons which prevented the employee from so resuming.

(f) Holiday leave travel assistance may only be granted or claimed in respect of approved recreational leave, and for no other purpose.

(g) An employee shall give at least one month's notice of his intention to claim travel assistance.

17.—LONG SERVICE LEAVE

A. Right to Leave:

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

B. 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 all continuous service irrespective of age.

(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 a 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 a 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;

(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 26th 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 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 2 months from the date of such termination;

(e) 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 6 months from the date of such termination;

(f) 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 paragraphs (d) to (f) inclusive of this subclause, shall not (except as set in paragraph (5) of this subclause), count as service.

C. Period of Leave:

(1) The leave to which a worker shall be entitled or deemed to be entitled is 6½ weeks for each 5 years continuous service, provided that—

(a) no entitlement arises or is deemed to arise until the worker has completed 5 years continuous service;

(b) leave be taken in not more than 2 periods;

(c) except in special circumstances approved by the employer no period shall be less than 3 weeks.

(2) Leave taken pursuant to clause (1) does not count as service for long service leave purposes but does not break the continuity of service.

(3) A worker who completes 10 years continuous service and remains in the service of the employer shall, for the purpose of accruing further entitlements to leave under this clause, be deemed to have commenced a new period of engagement on the day following the completion of that 10 years of service.

(4) Where a worker is entitled to leave under the preceding provisions of this clause and his employment is terminated:

(a) by his death; or

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

he shall be deemed to have commenced that leave immediately prior to such termination.

D. Payment for Period of Leave:

(1) A worker who proceeds on or is deemed to have commenced long service leave shall be paid for the period of leave the wage prescribed in the wages schedule and applicable to him immediately prior to the commencement of the leave together with such service pay as applies to him under clause 23 and a worker who resumes employment with same employer immediately following that leave shall then be paid a loading of 20 percent of the ordinary wage prescribed in the wages schedule for the period of that leave.

E. Taking Leave:

(1) In a case to which placita (a) and (b) of paragraph (4) of subclause C. 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 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 Board of Reference the employer shall give to the worker at least one month's notice of the date from which his leave is to be taken.

(c) any leave shall be inclusive of any public holidays specified in this Award occurring during the period when the leave is taken but shall not be inclusive of any annual leave.

(d) 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.

(e) 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 (4) of subclause C. 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 or 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.

F. Granting Leave in Advance and Benefits to be Brought into Account:

(1) The 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 subclause 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.

G. 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 3 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 with respect to the time and wages record.

H. Special Board of Reference:

(1) There shall be constituted a 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 Australian Mines and Metals Association (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.

I. Exemptions:

The Board of Reference may subject to such conditions as it thinks fit exempt the 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.

18.—SICK LEAVE

(1) Subject as hereinafter provided a worker shall be entitled to payment for non-attendance on the grounds of personal ill-health—

(a) for not more than 40 hours during his first year of service; and

(b) for not more than 60 hours in his second and subsequent years of service.

Payment hereunder may be adjusted at the end of each calendar 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 to a greater allowance than that made at the time the sickness occurred. This clause shall not apply where the worker is entitled to compensation under the Workers' Compensation Act.

(2) No worker shall be entitled to the benefits of this clause unless he produces proof satisfactory to his employer of sickness, but the employer shall not be entitled to a medical certificate for absence is for 3 days or more.

(3) A worker to be entitled to payment for non-attendance on the ground of personal ill-health shall, as soon as reasonably practicable and, where possible, before the shift commences, notify the employer of his inability to attend for work, the nature of his sickness (so far as is practicable) and the estimated duration of the absence.

(4) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (1) of this clause which has in any year not been allowed to any worker by his employer as paid sick leave may be claimed by the worker, and subject to the conditions hereinbefore prescribed, shall be allowed by his employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.

(5) The employer shall obtain protection for its employees through an insurance broker or insurance company and subject to the worker's claim being bona fide then certain benefits shall be payable.

(a) Insured Event	Benefits Payable $
(i) Accidental death	50,000.00
(ii) Loss of 2 limbs or 2 eyes or an eye and a limb	25,000.00
(iii) Loss of 1 eye or limb	12,500.00
(iv) Loss of thumb and index finger	2,500.00
(v) Temporary total disablement as a result of accident	The wages specified in clauses 21, 22 and 23 to be incorporated
(vi) In the even of temporary partial disablement of a worker as a result of an accident necessitating reclassification to a lower classification	$50.00 per week
(vii) Temporary total disablement arising from illness	The wages specified in clauses 21, 22 and 23 to be incorporated

(b) Weekly benefits for each employee for any one accident are payable for 104 weeks.

(c) Weekly benefits in respect of each employee arising from illness are payable for 104 weeks for any one illness.

(d) (i) No claim may be made under this policy where the absence is less than 7 consecutive days.

(ii) In the event of the accident or illness being not less than 7 days the worker shall firstly

claim any unused sick pay. He shall then be entitled to receive benefits under the scheme from the date of the expiration of his sick leave entitlement.

(e) The insurance applies 24 hours per day 7 days per week whilst the employee is on the payroll of the employer.

(f) The amount of any benefit payable shall be reduced by the amount of any workers' compensation or sick leave payment received by the employee.

19.—LEAVE FOR UNION TRAINING

(1) Upon application to the employer by an accredited Union representative a total of 10 mandays per calendar year may be allowed without loss of ordinary hours of pay for the purpose of Union members attending approved training courses or seminars.

(2) The total of 10 mandays applies to each Union party to this Award.

(3) Any time so spent shall not break the worker's continuity of service with the employer.

20.—TRAINING AND PROMOTION

The employer recognises the expressed wishes of the workers for job opportunities to be made available to current employees. The employer shall give first choice of jobs in higher classifications to current employees after taking into account, but not being limited to, the following considerations—

(i) length of service;

(ii) desire for upgrading by the worker;

(iii) aptitude.

21.—WAGES AND ALLOWANCES

(1) The weekly rates of pay under the provisions of this award shall be—

Classification:	Column A $	Column B $
Boilermaker (who is also required to mark-out)	434.80	444.80
Boilermaker	432.70	442.70
Fitter and Turner	432.70	442.70
Fitter—Mixed Plant	432.70	442.70
Fitter—Heavy Duty—Diesel	432.70	442.70
Electrical Fitter	432.70	442.70
Serviceman	406.70	416.70
Tool & Material Storeman	400.30	410.30
Machinist—Second Class	400.30	410.30
Trades Assistant	390.30	400.30
Mobile Equipment Operator Grade 2	415.20	425.20
Mobile Equipment Operator Grade 1	409.20	419.20
Process Operator Grade 2	387.70	397.70
Process Operator Grade 1	380.50	390.50
General Hand	358.30	368.30

(2) Leading Hand:

In addition to the wage prescribed in subclause (1) of this clause a Leading Hand shall be paid—

	$
(a) if placed in charge of not less than 3 and no more than 10 other workers	15.20
(b) if placed in charge of more than 10 and no more than 20 other workers	23.40

(3) A temporary worker shall be paid 5% of the ordinary rate in addition to the wage he is otherwise entitled to for the calling in which he is employed.

(4) (a) All tradesmen shall be required to provide themselves with an adequate kit of tools. This kit of tools shall be as agreed upon between the Unions and the employer.

(b) A tool allowance of $10.20 flat per week shall be paid to compensate tradesmen for wear, tear, loss and damage of their kit of tools. Should tools be lost or damaged through no fault of the tradesman concerned, the circumstances shall be reviewed and if the claim is justified tools shall be replaced at the employer's expense.

(5) A tradesman with one year's job experience with Leslie Salt Company shall be paid an allowance of $6.20 flat per week which shall be increased to $11.60 flat per week after 2 years job experience with the Company.

(6) The allowances prescribed in subclause (4)(b) and (5) of this clause are to be paid for 5 days worked in any week and shall be pro rated downwards if less than 5 days are worked.

(7) On each occasion when the Western Australian Industrial Commission makes a General Order with regard to the indexation of wages, the wages and allowances prescribed in this Clause shall be increased in accordance with the indexation formula on which the General Order is based.

22.—DISTRICT AND SITE ALLOWANCES

(1) Subject to the provisions of subclause (3) in addition to the wages prescribed in clause 21 an allowance shall be paid at the rates set out below, to each worker employed in the following area —

Within that area of the State situated between Lat. 24° and a line running east from Carnot Bay to the Northern Territory Border = $28.70.

(2) The allowance prescribed in subclause (1) of this clause shall be paid for five days worked in any week and shall be reduced proportionality if less than five days are worked.

(3) A worker living in a mess or camp provided by the employer free of charge to a worker shall be paid half the rates prescribed in subclause (1) of this clause.

(4) Should any change in circumstances arise affecting the basis of District Allowance then parties to this Award shall have the liberty to apply for an amendment to this clause.

(5) A Site Allowance of $21.90 flat per week shall be paid to all workers. This allowance shall be paid for any 5 days worked in a week and shall be pro rated downwards if less than 5 days are worked.

(6) The site allowance prescribed in subclause (5) of this clause shall on each occasion when the Western Australian Industrial Commission makes a General Order with regard to the indexation of wages be increased in accordance with the indexation formula on which the General Order is based.

(7) The payments prescribed in this clause are payable for the ordinary hours and are not included in the ordinary wage for the calculation of overtime or penalty rates but, subject to the provisions of this Award, form part of the ordinary wage payable during annual leave, public holidays, paid sick leave, paid special leave and Long Service Leave.

23.—SERVICE PAYMENTS

(1) Subject to the provisions of this clause each worker shall, in addition to payments otherwise due to him under this award, be paid service pay as follows —

	Per Week $
After 6 months continuous service	19.70
After 12 months continuous service	24.50
After 18 months continuous service	28.20
After 24 months continuous service	33.10
After 36 months continuous service	36.70
After 48 months continuous service	39.00
After 60 months continuous service	41.60
After 72 months continuous service	44.00
After 84 months continuous service	48.20

(2) "Continuous Service" has the same meaning as in the Long Service Leave provisions.

(3) The payments prescribed in this clause are payable for the ordinary hours and are not included in the ordinary wage for the calculation of overtime or penalty rates but, subject to the provisions of this Award, form part of the ordinary wage payable during annual leave, public holidays, paid sick leave, paid special leave and Long Service Leave.

(4) Payments under this clause are to be paid for 5 days worked in any week and shall be pro rated downwards if less than 5 days are worked.

(5) This clause does not apply to apprentices.

(6) On each occasion when the Western Australian Industrial Commission makes a General Order with regard to the indexation of wages, the service payments prescribed in subclause (1) of this clause shall be increased in accordance with the indexation formula on which the General Order is based.

24.—SPECIAL RATES AND PROVISIONS

(1) Height Money :

A worker shall be paid an allowance of $1.33 for each day on which he works at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linesmen or to riggers and splicers.

(2) Dirty Money :

A worker shall be paid an allowance of 42 cents per hour when engaged on work on an unusually dirty nature where clothes are necessarily unduly soiled or damaged by the work done.

(3) Confined Space :

A worker shall be paid an allowance of 55 cents per hour when, because of the dimensions of the compartment or space in which he is working he is required to work in a stooped or otherwise cramped position or without proper ventilation.

(4) (a) Sandblasting :

A worker who is required to perform sandblasting shall be paid an allowance of 42 cents per hour.

(b) Epoxy Painting :

A worker who is required to use epoxy paint shall be paid an allowance of 42 cents per hour.

(c) A worker engaged during ordinary hours and/or overtime for more than a total of 4 hours on any one day or shift performing sandblasting and/or epoxy painting shall be paid an allowance of 42 cents per hour for the whole day or shift.

(d) Painting :

A worker assigned to painting duties shall be paid an allowance of 18 cents per hour.

(e) Toxic Substances :

(iii) A worker who is required to wear a respirator or similar approved protective equipment when working with toxic or hazardous substances shall be paid an allowance of 42 cents per hour.

(5) Percussion Implements :

A worker required to use a percussion jackhammer of 40 kilogram mass or more will, in addition to any other entitlement, be paid 37 cents per hour for each hour so worked by him with that jackhammer.

(6) A worker who is required to work from a ladder shall be provided with an assistant on the ground where it is reasonably necessary for the worker's safety.

(7) Protective Equipment :

(a) The employer shall have available a sufficient supply of protective equipment (as for example, helmuts, goggles, (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, waterproof clothing or other efficient substitutes thereof) for use by his workers when engaged on work for which some protective equipment is reasonably necessary.

(b) A worker shall sign an acknowledgement when he receives any article of protective equipment and shall return that article to the employer when he is finished using it or on leaving his employment

(c) A worker to whom an article of protective equipment has been issued shall not lend that article to another worker and if he does he shall remain responsible for that protective equipment.

(d) Before helmets, goggles, glasses or gloves or any such substitutes which have been used by a worker are re-issued by the employer to another worker, they shall be effectively sterilized.

(e) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by the employer for workers required to work on live electrical equipment.

(f) During the time any article of protective equipment or hand tool is on issue to the worker he shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted, but he shall not be responsible for any loss attributable to the employer's failure to provide adequate lock-up facilities.

(g) A worker who is required to operate sandblasting equipment shall be issued with overalls and individual sandblasting headgear, unless adequately sterilized headgear is available.

(8) First Aid Certificate :

(a) A worker who is the holder of a current St. John Ambulance First Aid Certificate shall be paid an allowance at the rate of $5.00 per week.

(b) This allowance is payable only for actual attendance at work and is not payable for any period of absences, approved or unapproved.

(c) A worker shall have refunded to him by the employer the Course fees incurred in obtaining the above First Aid Certificate if the certificate has been obtained subsequent to the effective date of this Award.

(9) Safety Footwear :

(a) Each worker shall be issued free of charge with no more than 2 pairs of safety footwear during each year of service.

(b) In the event an employee terminates his employment prior to 6 months of service after receiving the issue, he shall pay to the employer half the cost of his safety footwear issue.

(c) A worker who requires more than 2 pairs of safety footwear in any year may purchase such additional footwear at cost price to the employer.

(d) Safety footwear shall be worn during all time on duty.

(10) Clothing :

(a) The employer shall provide each employee with 3 sets of work clothes at the commencement of each year of service. Each set of clothes to comprise—a shirt and pair of shorts or trousers. Should overalls be preferred, one set of overalls shall be classified as one set of work clothes. Plus one jacket each two years.

(b) In the event an employee terminates his employment prior to 6 months of service after receiving the issue, he shall pay to the employer half the cost of his clothing issue.

(11) (a) In respect of employees regularly assigned into the Harvest area, the Company shall provide replacement thermos flasks and crib size eskys on presentation of the unserviceable unit, fair wear and tear excepted.

(b) Employees occasionally assigned to the Harvest or other production areas away from a recognised mess shall be provided with a loan thermos and esky whilst so engaged.

(12) A "smoko" allowance of 42 cents per shift worked shall be paid to all workers.

(13) Convenience Facilities :

The following facilities shall be provided at the site of the Harvest—

(a) a First Aid Kit;

(b) a 2-way radio in the Harvest prime-mover and/or the Grader.

(14) A Trades Assistant who is required to set up and operate a radial drill, pedestal drill or power hacksaw shall be paid Machinist—Second Class rate as set out in clause 21(1) of this Award.

(15) Electrician's Licence applies to an—

Electrician Special Class
Electrical Fitter and/or Armature Winder
Electrical Installer

who holds an "A" or "B" Grade Licence and who may be required to use that licence during the course of his employment shall be paid an allowance of $10.20 flat per week.

(16) On each occasion when the Western Australian Industrial Commission makes a General Order with regard to the indexation of wages the Special Rates prescribed in subclause (1), (2), (3), (4), (5) and (12) of this clause shall be increased in accordance with the indexation formula on which the General Order is based.

25.—TIME AND WAGES RECORD

(1) The employer shall make and keep a record or records showing —

(a) the name, address, date of birth and classification of each worker;
(b) the starting and finishing times on each day;
(c) the hours worked;
(d) the wages and overtime (if any) and allowances paid;
(e) deductions;
(f) leave paid and accrued.

(2) The time and wages record shall be open for inspection by 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 subclause and if for any reason the record is 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.

(3) Any system of automatic recording by machines shall be deemed to be a record for the purposes of this clause.

26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly and shall, if the worker so requests, be paid into a bank account nominated by him but may otherwise, at the employer's option, be paid in cash or by cheque.

(2) At or before the time at which the worker receives his wages he shall be issued with a slip showing the gross amount of wages and allowances due to him, all deductions therefrom, the total number of hours worked by him, including the number of overtime hours and the rate at which such overtime has been paid.

(3) Any error in the compilation of a worker's pay shall, at his request, be adjusted within 48 hours of the time at which he makes that request, Saturdays, Sundays and holidays excepted. Worker-caused errors shall be adjusted in the next following pay.

(4) All moneys due to a worker on the termination of his employment shall be paid to him within 1 hour of his presenting his final clearance to the Pay Office unless he presents that clearance less than 1 hour before the normal time of closing of that office, in which case such moneys shall be paid to him within 1 hour of the opening of that office on the following working day.

(5) A worker, when about to proceed on annual leave under this Award, may request that the entitlements otherwise due to be paid to him immediately preceding the commencement of leave, be available to him upto 2 normal working days before that time. In such circumstances he shall be paid accordingly less the payment otherwise due in respect of those 2 days.

27.—POSTING OF NOTICES

(1) The employer shall keep a copy of the Award posted in a place where it may readily and conveniently be seen by the workers to whom it applies.

(2) The employer shall provide a glass-frontage Notice Boards at suitable locations for the posting of Union notices and may remove any notice which is not signed by an official of any Union party to this Award or by a Shop Steward of the Union.

28.—UNION OFFICIALS

(1) On notifying the employer or his representative, an accredited representative of the Union shall be permitted to interview a worker during the recognised meal break or at some other time agreed by the Company, on the business premises 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 discuss the subject of any such disagreement but shall not interfere in any way with the carrying out of work.

29.—INDUSTRIAL RELATIONS PROCEDURES

(1) To facilitate the remedying of any grievance or the settlement of any dispute, the following procedure shall apply—

(a) The worker concerned shall firstly present the grievance to the Superviser or the worker's immediate superior on the written grievance form and may if he so desires request that his Shop Steward be present at that time;
(b) The parties at this level shall make every endeavour to resolve the problem satisfactorily within 1 hour but failing satisfactory resolution, the Shop Steward may then discuss the matter with an officer nominated by the employer to deal with such matters on site;
(c) The officer referred to in paragraph (b) shall, within 48 hours of discussing a grievance with a Shop Steward (Saturdays, Sundays and holidays excepted), advise the Shop Steward, and such advice may be in writing, of the employer's decision on the matter. Provided that discussions have been held on the matter and where a longer period than 48 hours is necessary for a decision to be made, the employer's decision shall be conveyed to the Shop Steward within the agreed time;
(d) If the matter is not resolved by the foregoing discussions, the Shop Steward shall notify the appropriate full-time official of his Union, and shall then leave the conduct of negotiations in the hands of the Union;
(e) Where a matter has been referred to the Union by the Shop Steward, the Union shall promptly take all steps necessary under its rules and under the Industrial Arbitration Act, to resolve the matter;
(f) (i) where the matter has not been resolved within 7 days of being referred to the Union, either party may apply to the commission for a Board of Reference to resolve the matter.
(ii) subparagraph (i) above does not prevent either party from applying to the Commission within the 7 day period stated in that paragraph.

(2) A Shop Steward shall not leave his place of work to investigate any matter, or to discuss any matter with the employer's representative unless on each occasion he first obtains permission to do so from his Supervisor. Such permission shall not be unreasonably withheld when applied for

(3) Provided that the Shop Steward is satisfied that meaningful and genuine consideration is being given to the problem by the employer, he shall not during working hours call or hold any meeting of the workers concerned with any grievance or dispute and work shall continue normally without any bans or limitations being imposed while the above procedures are being carried out.

(4) Should a grievance necessitate the worker concerned to have access to his personal file, the employer shall make that file available to him on request during normal office hours Monday to Friday.

(5) Regular industrial relations meetings shall be held between the Shop Stewards and the employer to discuss industrial problems and matters concerning the workers, and such meetings shall take place bi-monthly on a day to be agreed upon. Attendance at such meetings shall be without loss of pay for normal rostered hours for the Shop Stewards. Wherever possible, an agenda shall be distributed at least 1 week in advance of such meetings.

(6) Where any Shop Steward is off duty (not being on strike) and in that capacity is called in by the employer, he shall be paid at ordinary time rates for the time involved.

(7) The Combined Union Council comprising 4 Shop Stewards employed by Leslie Salt Company shall be allowed 2 hours without loss of pay to attend bi-monthly meetings of that Council.

(8) Each month time shall be allowed for the Union to hold a meeting and the time spent in attending those meetings shall be paid for, upto a maximum of 45 minutes, at ordinary time rates. Each meeting shall be agreed between the employer and the Union at least 1 day in advance and shall be held at a time convenient to the employer. This time is not cumulative from month to month.

(9) Upon application to the employer by an accredited Union representative a total of 32 hours per calendar year shall be allowed without loss of ordinary hours of pay for the purpose of one worker to attend the A.W.U. Pilbara/Kimberley meetings, should an employee of Leslie Salt Company be elected to this Committee.

30.—BOARD OF REFERENCE

(1) The Commission hereby appoints, for the purposes of this Award a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to regulation 16 of the Industrial commission Regulations, 1980..

(2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which, under this Award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

31.—TRAVELLING TO AND FROM WORK

(1) (a) Transport provided will be bus transport to and from work. Whilst workers continue to reasonably utilize this transport they shall be permitted to do so at no cost to themselves.

(b) No claim in respect of travelling costs shall be accepted by the employer in respect to those workers who elect to travel to and from work in other than the employer provided transport.

(c) The provided transportation shall operate on designated routes and at designated times as announced by the employer from time to time.

(d) It is the responsibility of all workers to ensure that they are at the designated bus pick-up points at the designated times.

(2) (a) When requested, and at least 24 hours in advance, the employer may, at its discretion, provide specific transportation for a group of workers to attend a specified meeting.

(b) Consideration may be given by the employer to such requests at less than 24 hours in extenuating circumstances.

32.—REDUNDANCY

The provision of this clause shall apply in the event of the employer making any worker redundant.

For the purpose of this clause redundant shall be defined as meaning the dismissing of a worker for reasons other than misconduct and it shall be deemed to include dismissals for or arising out of merger, take-over or re-organisation of work and/or production.

(a) Before any notice of redundancy is issued, the employer shall inform the Secretary of the Union concerned that redundancies are being contemplated, the reasons for them, the numbers, name and classifications of the workers likely to be involved and the proposed order of redundancy.

(b) In any discussions between the Union and the employer or before the Western Australia Industrial Commission, as the case may be, the following guidelines shall be observed—

(i) any worker wishing to be made redundant by volunteering shall be dismissed first, providing that he shall be entitled to the same redundancy benefits as other workers;

(ii) no other dismissals, relevant to this clause, shall occur until all accrued annual leave and/or long service leave entitlements have been taken by the workers so entitled, unless otherwise agreed by the parties;

(iii) all workers above retiring age shall be the first to be dismissed. Dismissals shall then be in accordance with the principle of "first on, last off";

(iv) the maximum amount of possible notice shall be given to all workers to be dismissed but in any case workers shall receive at least 4 weeks' notice or pay in lieu thereof.

(v) Additionally each worker shall receive—

(a) 40 hours pay plus Service Payment for each complete year of service;

(b) all pro rata payments due to the worker in respect of termination;

(c) payment of pro rata Long Service Leave after 12 months' continuous service;

(d) an air-fare to Perth for the employee, his wife and dependant children, subject to leaving the area;

(e) assistance with transport of personal effects;

(f) retraining of employees to retain employment with the Company shall be discussed when circumstances of any redundancy of a worker or workers is pending or occurs;

(g) tenancy of Company accommodation to be discussed when the circumstances of any redundancy of a worker or workers is pending or occurs.

33.—UTILIZATION OF CONTRACTORS

(1) Contractors will generally be employed for major construction, modification and project work. Normal routine work is best done by the employees of the Company having an intimate knowledge of the operation and its requirements. Contractors may, however, be necessary from time to time to perform some such work in order to meet surges in requirements which arise from peculiar or special circumstances.

(2) (a) The employer will not retain the services of any contractor to perform the work which would otherwise be performed by workers covered by this Award, until discussions are held with the relevant unions.

The employer shall give at least 48 hours notice to the union representative except in special circumstances.

(b) No worker employed by the Company shall suffer any detrimental effect in respect of his normal earnings, job security or available reasonable hours of work by reason of the employment of Contractors' employees in such circumstances.

(c) There will be no retrenchment of Company employees because of the employment of Contractors.

(d) The provisions of this subclause shall not act in any manner prejudicial to the employer's operation in the event of an emergency circumstance arising.

(3) Union representatives credentialled to the employer by the Union party to this Award may not absent themselves from duty for purposes of attending matters on behalf of a Contractor's employee but a Union representative shall not be prejudiced by so doing in off-duty hours with the approval of his Union and the approval of the Contractor to enter his premises.

34.—APPRENTICES

(1) Apprentices may be taken to electrical fitting, fitting and/or turning, electrical installing, first class welding, boilermaking, motor mechanics, in the proportion of one apprentice to every two or fraction of two tradesmen; Provided that the fraction of two shall not be less than one.

(2) Except as hereinafter provided, every agreement of apprenticeship shall be for a period of—

(a) 5 years, unless with the approval of the Commission that period is reduced or deemed to have been commenced prior to that date of the agreement. Provided that—

(i) where the apprentice has completed the tenth year of schooling and has obtained the Achievement Certificate, High School

Certificate or Junior Certificate of the Public Examinations Board in such subjects and at such levels as the appropriate Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, the period of apprenticeship shall be 4 years;

(ii) where the apprentice has completed the eleventh year of schooling and has obtained the Achievement Certificate, High School Certificate or Junior Certificate of the Public Examinations Board in such subjects and at such levels as the appropriate Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to 3½ years; and

(iii) where the apprentice has completed the twelfth year of schooling and has obtained the Achievement Certificate, High School Certificate or Leaving Certificate of the Public Examinations Board in such subjects and at such levels as the appropriate Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to 3 years.

(3) (a) The employer shall provide a basic tool kit at the commencement of the apprenticeship. The apprentice shall pay for these tools by forfeiture of the weekly Tool Allowance until the cost of the tools is fully refunded. The tools shall then become the property of the apprentice and the full Tool Allowance shall be paid to cover the cost of replacement or additional tools.

(b) The employer reserves the right to inspect the apprentice's tool kit during the period that the cost of the tools is being refunded to the Company.

(c) The employer shall not be responsible for the replacement of lost or stolen tools or tools damaged through misuse or negligence.

(4) A person who has satisfactorily completed an approved pre-apprenticeship course conducted by the Technical Education Division of the Education Department may be indentured as an apprentice under this Award on a 3-year term apprenticeship.

(5) Subject to the foregoing provisions of this clause, the provisions of the Apprenticeship Regulations made under the Industrial Arbitration Act 1912-1979 and in force at the date of this Award, are hereby incorporated in and form part of this Award.

(6) (a) Any apprentice, during the first two years of training, will not work in excess of the ordinary hours.

(b) The Company, through its supervisors, will be totally responsible for on the job training in co-ordination with Technical School Training in accordance with accordance with the specific syllabus of any apprentice.

(c) In the period of training an apprentice there will be a three monthly review of all apprentices by the Company together with the union representative.

(7) An apprentice shall be paid a percentage of the appropriate Tradesman's rate in accordance with the following scales —

5-Year Term	%
1st Year	45
2nd Year	55
3rd Year	65
4th Year	85
5th Year	95
4-Year Term	
1st Year	50
2nd Year	65
3rd Year	85
4th Year	95
3 1/2-Year Term	
1st 6 Months	50
Next Year	65
Next Year following	85
Final Year	95
3-Year Term	
1st Year	60
2nd Year	85
3rd Year	95

(8) On completion of his apprenticeship, an apprentice shall be offered work as a Tradesman for a period of not less than 6 months unless the ability and attitude of the apprentice is of such a poor standard that his retention as a Tradesman is not justified.

SCHEDULE 1

APPLICATION OF 38-HOUR WEEK

(1) A 38-hour week will be worked from July 19th 1982. The system adopted at Leslie Salt Co. will be to take an "allocated day off" once in each 28-day cycle. It is envisaged that during the life of the 1982/84 Award, all employees will take the same day off, which will be the third Friday of each 28-day cycle. The only exception will be employees required for shiploading and essential services, who will take the "allocated day off" on the fourth Monday or Friday of the cycle.

Should sufficient justification arise, the allocated day off may be changed from the third Friday to some other day in the 28-day cycle if mutually agreed by the Company and the majority of employees.

An allocated day off, as an additional leisure day, will not be part of the normal hours of work and is therefore not a paid day. An employee will be entitled to no more than 13 allocated days off per year.

(2) Attendance records for each 28-day cycle shall be maintained by each Department to monitor allocated days off.

(3) The above method of a 38-hour week is an averaging system, as detailed below.

WEEK	HOURS WORKED	HOURS PAID
Week 1	40	40
Week 2	40	40
Week 3	32	32
Week 4	40	40
	152	152

Hourly rates of pay are obtained by dividing the weekly pay rate by 38.

Overtime begins on ordinary working days after 8 hours have been worked except for pre-start overtime which is all at overtime rates.

(4) Each day of paid leave occurring during any 28-day cycle shall be paid at the rate of 8 ordinary hours. This includes annual leave, long service leave, sick leave, public holidays, workers' compensation, jury service, compassionate leave and union training.

(5) Allocated days off occurring during periods of paid leave will be processed as follows—

(a) Annual Leave

An allocated day off occurring during an employee's annual leave will be included in the leave entitlement, i.e. if an employee had 25 days accrued leave entitlement and wishes to take 15 days leave then 14 days annual leave plus 1 allocated day off = 15 days and 11 days annual leave entitlement would be retained.

Holiday pay would be 14 days x 8.0 hours x hourly rate + applicable leave loading + the ADO would be an unpaid day.

(b) Long Service Leave

As for Annual Leave except that leave loading is 20% paid on employee's return to work.

(c) Sick Leave (including Sickness & Accident Benefits

Because an allocated day off is a leisure day and not a paid day an employee who is on sick leave on that day will not have the allocated day off rescheduled. However, his sick leave credits are retained. In the event there is an extended period of absence on sick leave there will be no accrual of allocated days off.

(d) Worker's Compensation

Because an allocated day off is not a paid day, if an employee is absent on worker's compensation then

his allocated day off will not be rescheduled. In the event there is an extended period of absence on worker's compensation there will be no accrual of allocated days off.

(e) Public Holidays

An allocated day off will not be scheduled on a public holiday.

(f) Jury Service

As for (d) Worker's Compensation.

(g) Compassionate Leave

Because an allocated day off is not a paid day, an employee who is absent on compassionate leave when the allocated day off falls due shall not have that day rescheduled.

(h) Leave for Union Training

If an employee is absent on union training leave as provided in the Award then his entitlement to an allocated day off will be rescheduled to a mutually agreed day within the 28-day cycle.

DATED at Perth this 21st day of September, 1982.

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).

23 May 1996.

Reasons for Decision.

THE TRIBUNAL: On 29 August 1994 the Director General of the Ministry of Education advised Mr Burrows, a teacher employed by the Minister for Education (the Minister), that he had received information from the District Superintendent concerning complaints against Mr Burrows by students of South Lake Primary School. He was of the opinion that if these allegations were proven Mr Burrows may be guilty of "conduct" under s.7C(2)(e) of the *Education Act 1928*. He informed Mr Burrows that as a result he had authorised the District Superintendent of the Melville District to conduct an enquiry into all the circumstances of the matter so that the Director General might determine whether Mr Burrows was guilty of misconduct under s.7C(2)(e) of that Act.

Section 7C of the *Education Act 1928* provides that, where it appears to the Chief Executive Officer that a teacher may be guilty of misconduct, the Chief Executive Officer shall cause an enquiry to be held by an authorised person. (No issue arises from the fact that the correspondence refers to the "Director General" whereas the *Education Act 1928* refers to "Chief Executive Officer". For convenience, reference is made in these reasons to "Chief Executive Officer".) Where an enquiry is being held the Chief Executive Officer may suspend the teacher from duty. After an enquiry the Chief Executive Officer may decide that the teacher is not guilty of misconduct or that the teacher is guilty of misconduct, in which case a number of options are open to the Chief Executive Officer which are set out in s.7C(12) of that Act.

On 1 December 1994 the State School Teachers Union of WA (Inc) (the union) made an application to the Government School Teachers Tribunal (the Tribunal) pursuant to s.78(1)(a)(ii) of the *Industrial Relations Act 1979* (the Act). The application seeks:

(a) an interpretation of s.7C;

(b) a declaration that an enquiry under s.7C is to be carried out in accordance with the rules of natural justice requiring compliance with certain matters set out;

(c) a direction that the enquiry not proceed because the appointment of the authorised person is null and void;

(d) a permanent stay of the proceedings against Mr Burrows under s.7C;

(e) in the alternative to (d), a declaration or order that the proceedings in respect of s.7C be stayed until Regulation 135 of the *Education Act Regulations 1960* is followed;

(f) a declaration that the Chief Executive Officer only authorise the holding of an enquiry where it appears that Mr Burrows may be guilty of misconduct;

(g) declarations or orders that the person or persons authorised by the Chief Executive Officer be disqualified from conducting the enquiry;

(h) declarations or orders that the authorised person provide certain particulars in relation to each of the complaints which have been made.

As a matter of record, it is appropriate to note that the Tribunal convened a conference of the parties in an endeavour to resolve the issue by conciliation. However, that was not able to be achieved. The Tribunal then indicated that the application would be formally dealt with by the Tribunal and that, until that determination occurred, the enquiry should be stayed (Order dated 14 February 1995 (1995) 75 WAIG 1027). The Minister appealed that Order to the Full Bench and, as a consequence, and with the agreement of the parties, these proceedings were adjourned (Order 16 March 1995). The Decision of the Full Bench dismissing the appeal issued on 27 September 1995 (75 WAIG 2684). The Tribunal was informed that a further appeal to the Industrial Appeal Court was to be initiated. Notwithstanding, the Tribunal considered that the application ought proceed and it was set down for hearing on 15 and 16 February 1996.

On 9 May 1995 the Act was amended by repealing those sections of the Act relating to the Tribunal (*Industrial Legislation Amendment Act 1995,* s.10). The Tribunal was abolished as a consequence of that amendment. The Tribunal however, is to continue as constituted under the repealed provisions in order to deal with any claim made to the Tribunal where proceedings pursuant to the claim had commenced prior to 9 May 1995. Such a claim is defined as "pending proceedings" (s.21). The Tribunal determines this application before it as being pending proceedings as defined and it was not argued otherwise. The Tribunal therefore continues to deal with this application under the repealed provisions.

The Minister objects to the application on a number of grounds. The first ground to be considered is that of jurisdiction. The Minister argues that supervisory jurisdiction to restrain or otherwise influence the s.7C enquiry is a matter for the Supreme Court. It argues that as the Tribunal is an administrative body it does not have the power to restrain another administrative tribunal, and that the s.7C enquiry is another administrative tribunal.

Section 78(1)(a)(ii) of the Act was, prior to its repeal, as follows:

> "78. (1) Subject to Division 3 of Part II and subsection (4) of this section, the Tribunal has exclusive jurisdiction—
>
> (a) to enquire into and deal with—
>
> (i) ...
>
> (ii) any matter concerning the interpretation or application of any Act or regulation governing the service of a teacher, a group of teachers or teachers generally or concerning any inequity arising out of the application of any such Act or regulation."

It is clear that the above section includes the *Education Act 1928* and its Regulations (*Hon Minister for Education v SSTU* (1995) 75 WAIG 2677). The enquiry being undertaken against Mr Burrows is pursuant to s.7C of the *Education Act 1928* and the conclusion is inescapable that the Tribunal has the jurisdiction to enquire into and deal with it because it is a matter concerning the interpretation or application of s.7C of the *Education Act 1928* or concerning any inequity arising out of the application of s.7C of the *Education Act 1928 (Minister for Education v SSTU* (1995) 75 WAIG 2684 at 2686 (FB)). This conclusion applies both to the decision taken by the Chief Executive Officer to cause an enquiry to be held by an authorised person and to the enquiry held by the authorised person. This is so because the power to hold the enquiry and the conduct of it by the authorised person both derive from s.7C of the *Education Act 1928*.

That conclusion is not able to be validly attacked by describing the enquiry conducted by the authorised person as "an administrative tribunal". Even if it is the case, as the Minister argued on this occasion, that it is not open to one administrative tribunal to restrain or otherwise influence the proceedings of a separate administrative tribunal, that is not the situation here. The authorised person is not a separate administrative tribunal, as the Full Bench expressly found on an earlier occasion (*Minister for Education v SSTU (re Ms Levy*) (1995) 76 WAIG 35 at 39). An authorised person is conducting an enquiry pursuant to s.7C of the *Education Act 1928*. Section 78(1)(a)(ii) of the Act gives jurisdiction to the Tribunal to enquire into and deal with any matter concerning the application of s.7C, or any inequity arising out of the application of s.7C and that jurisdiction does not depend upon whether the enquiry conducted by the authorised person is described as an administrative tribunal. The situation here cannot be divorced from the wording of the legislation by the use of such a label. The Tribunal concludes that, whilst a supervisory jurisdiction to restrain, or otherwise influence, the exercise of a statutory right to decide whether or not to hold an enquiry, or the conduct of that enquiry pursuant to a statute may well reside with the Supreme Court, that conclusion cannot be read to mean that, in the light of s.78(1)(a)(ii) of the Act, the Tribunal does not have the jurisdiction to enquire into and deal with an application concerning the decision of Chief Executive Officer of the Ministry of Education to initiate an enquiry pursuant to s.7C of the *Education Act 1928* or the conduct of that enquiry by the person authorised by him. The Tribunal finds that it does have the jurisdiction to issue the orders sought.

That conclusion is rendered even more certain because the jurisdiction given to the Tribunal is an exclusive jurisdiction. The Tribunal is fortified in that conclusion by the observation of Malcolm CJ in *Gudgeon v Greg Black, Chief Executive Officer Ministry of Education* (10 November 1994, Supreme Court of Western Australia library No. 940629, unreported). In that matter Mr Gudgeon had been found guilty of misconduct pursuant to s.7C of the *Education Act 1928*. Notwithstanding his right of appeal to the Tribunal against that finding and the punishment imposed, Mr Gudgeon applied for a writ of *certiorari* to quash the decision of the Chief Executive Officer. The Supreme Court declined to issue a writ, and principally upon the ground that Mr Gudgeon had a right of appeal to the Tribunal. His Honour observed:

> "In these circumstances, the issue of this Court's discretion to grant *certiorari* falls to be determined on the footing that there is a Tribunal which has exclusive jurisdiction, not only to entertain an appeal which would raise the same questions as are raised on the application before us, but also exclusive jurisdiction to determine any questions of construction of the Education Act or the Education Regulations and in the context of the privative clauses in s.34(3) and (4) of the Industrial Relations Act 1979." (at p.30)

The weight given by the Chief Justice to the exclusive jurisdiction of the Tribunal in his reasoning gives support to the conclusion that the Tribunal has the jurisdiction to issue orders of the nature sought in these proceedings.

Furthermore, the conclusion is assisted by the words "enquire into and deal with" in s.78(1)(a) in contrast to the words "to hear and determine" in s.78(1)(b) which are relied upon by the Minister. An application pursuant to s.78(1)(a) relating to the decision taken by the Chief Executive Officer, or concerning the conduct of the enquiry by the authorised person, in my view lends itself to an enquiry by the Tribunal involving the use of the power to convene conferences, to conciliate, to assist the parties to reach an agreement, and to hear and determine those matters which remain not agreed. By way of contrast, an appeal pursuant to s.78(1)(b) is more readily heard and determined without recourse to those powers.

The Minister also relies upon s.80B(2)(a) of the Act in support of its contention. As we read that section it requires that legal practitioners may appear only by leave in a matter brought pursuant to s.78(1)(a) but legal practitioners may appear by right in a matter brought pursuant to s.78(1)(b). We are not sure whether the presence or absence of legal practitioners before the Tribunal is determinative of anything, but it is the case that the presence of legal practitioners is not ordinarily seen at conciliation or conference proceedings (*Western Mining Corporation v AWU* (1990) 70 WAIG 3526) and we find that the provisions of s.80B(2) tend, if anything, to support the construction we have reached above.

The Minister also argues that the Tribunal lacks the jurisdiction to make the orders sought because the respondent to this application is the Minister for Education and it is submitted that the Minister's relevant powers are merely to appoint teachers and to order their dismissal. Accordingly it is submitted that an order against the Minister cannot legally be of any consequence for the Chief Executive Officer and/or the authorised person in the exercise of their respective powers or duties. However the powers of the Chief Executive Officer in his administration of the Act are powers exercised subject to the Minister: *Education Act 1928* s.8. The Chief Executive Officer is, for that reason, the agent of the Minister for the purposes of the *Education Act 1928* (and see in this regard *SSTU v Hon Minister for Education (re Willetton Primary School)* (1995) 76 WAIG 40 at 41,43 (FB)). The Chief Executive Officer's duties under the *Education Act 1928* are carried out on the Minister's behalf by way of assisting him (*re Ms Levy* op.cit. at 36). An action taken by the Chief Executive Officer in the administration of the *Education Act 1928*, including action taken pursuant to s.7C, is action taken subject to the powers of the Minister to direct or control the Chief Executive Officer. The Tribunal therefore rejects the submission.

Similarly, the authorised person is the person authorised by the Chief Executive Officer for the purposes of s.7C. There is nothing that prescribes that an authorised person should be an employee of the Minister. However the authorised person is a person appointed by the Chief Executive Officer to conduct an enquiry under s.7C. It is within the jurisdiction of the Tribunal to issue an order directed to the Chief Executive Officer, through the Minister, concerning the conduct of an enquiry under s.7C of the *Education Act 1928*. The Chief Executive Officer is responsible for, and required to be responsible for, causing an enquiry to be held and for appointing the person who carries out that enquiry. In a matter such as the one currently before the Tribunal, a direction as sought that the enquiry by the authorised officer not proceed is an order directed to the Chief Executive Officer, and not an order directed to the authorised person. Such an order would be within jurisdiction. For the above reasons therefore the argument that the Tribunal does not have jurisdiction to make the orders as sought is rejected.

However the fact that the Tribunal has the jurisdiction to make orders of the type sought here does not mean that such orders should be granted. Such orders have an impact upon the conduct of an enquiry which may result in a delay which may itself frustrate the satisfactory conduct of the enquiry. Further, a teacher has a right of appeal from an adverse finding which is a complete re-hearing of the issue. That appeal would be able to canvas the issues raised in these proceedings. The existence of such an appeal is an argument against the Tribunal exercising its jurisdiction during the course of an enquiry. The union argues that where the calling of, or the conduct of, an enquiry is flawed a teacher should not have to wait to see if the eventual outcome of the flawed enquiry is adverse to the teacher, and then appeal the decision in order to overturn the result. In the process the teacher will have had an adverse finding made against him or her which, given that the calling of, or the conduct of, the enquiry was flawed, should

be avoided. Whilst we can see the force of the argument it has validity only where the flaw alleged is so fundamental that the Tribunal could not in good conscience permit the enquiry to continue in that form or at all. Such a situation would arise rarely and be the exception rather than the rule.

The Powers and Duties of the Chief Executive Officer under s.7C(3).

The Minister submits that the Chief Executive Officer ought to be of the view that a teacher may be guilty of misconduct before he causes an enquiry to be held. If the Chief Executive Officer may only lawfully proceed with a s.7C enquiry where it appears to him that a teacher may be guilty of misconduct then he must be of that view before he causes an enquiry to be held (*re Willetton Primary School* op. cit. at 41). The Chief Executive Officer is required as a prerequisite therefore, to go through a certain mental process. If, as a result of that process, the Chief Executive Officer reaches a decision that a teacher may be guilty of misconduct then he is obliged to cause an enquiry to be held. Alternatively, if the Chief Executive Officer does not reach a decision that a teacher may be guilty of misconduct then he may not lawfully cause an enquiry to be held. The decision of the Chief Executive Officer will be apparent from the matters about which he appoints the authorised person to conduct an enquiry. If the information received by the Chief Executive Officer alleges a single act by a teacher, then the decision to be made by the Chief Executive Officer is whether that single act could, if proved as fact, constitute misconduct on the part of the teacher concerned as that is defined in s.7C. If a number of alleged acts are drawn to the attention of the Chief Executive Officer the issue to be determined by him or her is whether those acts taken together could amount to that misconduct. It will only be in a case where it is unarguable that the matters referred to the authorised person could not possibly amount to misconduct as that is defined in s.7C that it can be shown that the decision to authorise an enquiry is invalid. In this case the letter to Mr Burrows from the Chief Executive Officer informing him of the enquiry refers to "information from the District Superintendent concerning complaints against you by students of South Lake Primary School" and that it was these allegations which the Chief Executive Officer believed could amount to misconduct (Exhibit 2(8)). That information contains a number of allegations (exhibit 2(44) *et seq*). The question is then whether the allegations collectively could possibly amount to misconduct as that is defined. If the answer to that question is in the negative then the discretion of the Chief Executive Officer was not properly exercised. If the answer is in the affirmative then the discretion of the Chief Executive Officer was properly exercised. During the course of the proceedings it was submitted that the initiating of the enquiry was flawed because it was influenced by a perceived controversy at the school surrounding the earlier arrest of Mr Burrows and the dismissal of charges laid against him. Reference was made that the Principal of that school was of the opinion that there is "considerable anger in this community over this issue" (exhibit 2(45)). However the question whether the discretion of the Chief Executive Officer was or was not properly exercised is to be assessed on the basis of the allegations he has determined might constitute misconduct. The opinion of the Principal may have contributed to the forwarding of information to the Chief Executive Officer but the calling of the enquiry is a decision for the Chief Executive Officer alone to make. That decision is to be based upon the allegations received by him. The existence of any controversy cannot prevent the Chief Executive Officer from initiating an enquiry if, on the allegations before him, it appears to him that Mr Burrows may be guilty of misconduct. The existence of any controversy does not lead to the conclusion that the decision to initiate an enquiry was based upon that existence. It is not apparent from the material before the Tribunal that the discretion of the Chief Executive Officer was not properly exercised.

The determination of the Chief Executive Officer arises from allegations received by him concerning a teacher. If the Chief Executive Officer reaches a decision that a teacher may be guilty of misconduct then he is obliged to cause an enquiry to be held into the alleged misconduct. The Chief Executive Officer authorises a person to enquire into the alleged misconduct. At this point, as we understand the evidence, the Chief Executive Officer informs the teacher of the decision he has reached and of the enquiry to be held. As a matter of good practice the Chief Executive Officer should advise the teacher of the alleged misconduct into which there is to be the enquiry, as apparently happened in the *Willeton Primary School Case*. In this case it was the authorised person who subsequently advised Mr Burrows of the subject of the enquiry but this has two disadvantages. The first is the delay between the advice of the enquiry and the advice of the subject matter of the enquiry. Given the potential seriousness of the determination of the Chief Executive Officer any delay would cause unnecessary anxiety on the part of the teacher who is not necessarily aware of the allegations which have been made. Secondly it is for the Chief Executive Officer to determine what allegations are to be the subject of the enquiry and not the authorised person. If the Chief Executive Officer advises the teacher of the alleged misconduct not only is there no delay, it is more difficult to suggest, as it has been suggested here, that the authorised person is determining what is to be the subject of the enquiry.

In this case Mr Burrows was merely advised by the Chief Executive Officer on the 29 August 1994 of the enquiry. It does not appear from the evidence in these proceedings when Mr Burrows was first informed of the details alleged against him but he was made aware at least by the 23 December 1994 (Exhibit 2(22) and (24)). In the circumstances no action is now required by the Tribunal to ensure that that Mr Burrows is aware of the allegations made against him, but the adoption of a procedure whereby the Chief Executive Officer advises the teacher of the alleged misconduct at the time the determination is made should be followed in the future.

The Conduct of an Enquiry under Section 7C.

Two matters arise under this heading. The first is the union's argument concerning the applicability of Regulation 135 of the *Education Act Regulations 1960*. The union has attacked the conduct of the enquiry into Mr Burrows because it has not followed the requirements set out in Regulation 135. It argues that an enquiry may only be commenced after the procedures in Regulation 135 have been followed. However, the authorities are against the union on this argument. This matter was argued in detail, and dealt with equally in detail, in a decision of the Tribunal in 1987 (67 WAIG 1028). The Tribunal examined the history of the Regulations prior to the insertion of s.7C into the *Education Act 1928* in 1981. The Tribunal rejected the union's then submission that Regulation 135 needed to be complied with on the ground that, in the Tribunal's view, the Chief Executive Officer on that occasion was not dealing with a "complaint" as envisaged by that Regulation and thus was not obliged to pay any regard to that Regulation (at p.1031). The Tribunal was of the view that s.7C and Regulation 135 are separate and distinct and that either of them may be utilised by the Chief Executive Officer depending on the nature of the information raised against the teacher. We were not informed that this decision has been overturned by any subsequent finding of the Tribunal. The matter was raised before the Full Court of the Supreme Court of Western Australia in *Milentis v Minister for Education* (1993) 52 IR 85 as one of three questions posed to the Court. However, it was agreed between the parties to that matter that it was unnecessary for that question to be answered in the circumstances of that case (at pp.87, 93). In *Gudgeon's* case (op. cit.) the Malcolm CJ commented that the procedure to be followed on an enquiry under s.7C(3) is not spelled out in any detail in the *Education Act 1928* or in the Regulations. He observed that there is a more detailed provision regarding complaints against a teacher in Regulation 135 of the Regulations but observed that the provision had no bearing on the matter then before the Court (decision p.18). The matter that was before the Court was an application for a writ of *certiorari* to quash the decision of the Chief Executive Officer that Mr Gudgeon was guilty of misconduct pursuant to s.7C.

The union argues that Regulation 135 should be followed because it says that the provisions of Regulation 135 provide a greater protection for the teacher than is the case when an enquiry is conducted under s.7C. It therefore argues that it is a curious result to have greater protection for a teacher for an offence less than misconduct, whilst for misconduct, with its attendant risk of dismissal from employment, there is less protection for the teacher concerned. While we are not

unsympathetic to the argument the provisions of s.7C provide no support for interpreting it to that effect. Further the position now is not different from the position prior to the insertion of s.7C into the *Education Act 1928* in 1981. Matters of alleged misconduct were provided for in the then Regulation 134 of the *Education Act Regulations 1960*. The provisions of s.7C are not materially different in this regard from the provisions of Regulation 134. I do not see any greater significance in this regard from the fact that the enquiry to be conducted where it appears to the Chief Executive Officer that a teacher may be guilty of misconduct is now an enquiry authorised by the Act rather than, as previously, the Regulations. In our view the analysis of the Tribunal in 1978 of the changes to the Act and the Regulations which led to the material provisions of Regulation 134 being reflected in s.7C of the *Education Act 1928* was, with respect, the correct approach (and see too *Milentis v Minister for Education* (op. cit. per Ipp and Wallwork JJ at pp.88-91). We have not been persuaded that the earlier decision of the Tribunal was wrongly decided by it.

The second matter which arises is the applicability of the rules of procedural fairness. It is not necessary for an enquiry under s.7C(3) to be formal, but the teacher shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing an explanation in relation thereto (s.7C(4)). It is conceded, and the Tribunal so finds, that in the conduct of an enquiry pursuant to s.7C the requirements of procedural fairness must be observed. The precise content of those rules will differ depending on the circumstances but the extent to which the Tribunal sees their applicability to this case is set out in what follows.

The Authorised Person.

A number of issues were raised during the course of the hearing regarding the person authorised by the Chief Executive Officer to conduct the enquiry. The first of these is the union's submission that the authorised person must identify, in respect of each complaint, how the alleged event amounts to misconduct for the purposes of s.7C. However, in our view the submission cannot be sustained. It is for the Chief Executive Officer, and not the authorised person, to determine whether a teacher may be guilty of misconduct as defined and to authorise the enquiry. It is for the Chief Executive Officer, and not the authorised person, to determine whether a teacher is, or is not, guilty of misconduct as a result of the enquiry. The function of the authorised person is to enquire into the alleged misconduct which has been referred to him or her by the Chief Executive Officer. The enquiry is therefore a fact finding exercise, the purpose of which is to prepare a report on the facts concerning the alleged misconduct for the consideration of the Chief Executive Officer. The authorised person should identify the allegations into which he or she has been authorised to enquire and provide an opportunity for the teacher to furnish an explanation (s.7C(4)). Whether the allegations may or may not amount to misconduct is not a matter for the authorised person.

The union attacks the authorisation of Mr D Maisey as the person authorised to conduct the enquiry. The union alleges that the authorisation is null and void because, firstly, the Chief Executive Officer did not have the power under s.7C to "authorise a person to determine whether or not Mr Burrows was guilty of misconduct under s.7C" and secondly because he did not have the power to order that the initial enquiry started by Ms Reeves continue but conducted by Mr Maisey. That submission similarly cannot stand. Mr Maisey's appointment was an authorisation to conduct an enquiry into the alleged misconduct so that the Chief Executive Officer may determine whether or not Mr Burrows is guilty of misconduct (exhibit A). There is no suggestion in that correspondence that Mr Maisey is being required by the Chief Executive Officer to make any finding at all whether Mr Burrows was, or was not, guilty of misconduct. Indeed, the letter of appointment from the Director General to Mr Maisey (exhibit A) expressly states:

> "You are to report your findings directly to me, however, you are not to make any judgements or recommendations in your report."

That is entirely consistent with the authorisation of a person to conduct an enquiry into the alleged misconduct. It is difficult to see that anything improper has occurred which would warrant a direction in the manner sought by the union.

The union submitted that a difficulty arose because the Chief Executive Officer first authorised Ms N Reeves to conduct the enquiry. The Chief Executive Officer subsequently apparently withdrew the authorisation of Ms Reeves and authorised Mr Maisey to conduct the enquiry (exhibit A). The union queried whether Mr Maisey was continuing the original enquiry, or whether the authorisation of Mr Maisey signalled the end of the original enquiry and the commencement of a subsequent enquiry. The power to authorise a person to conduct an enquiry is a power vested in the Chief Executive Officer. It follows, in our view, that the Chief Executive Officer has the power to withdraw that authorisation at any point prior to the completion of the enquiry or to authorise another person to conduct an enquiry, or indeed to continue with the same enquiry. The withdrawal of the authorisation from one person and the authorisation of another to continue the enquiry does not of itself constitute a new enquiry. That is the case here as is evident from a reading of exhibit A and exhibit 5. Although the union was critical of the conduct of the enquiry as it was conducted by Ms Reeves the appointment of Mr Maisey has overtaken the role of Ms Reeves. Mr Maisey's letter to Mr Burrows declares his intention not to have regard to any aspect of the enquiry previously begun by Ms Reeves (Exhibit 2(77)). There is nothing in the material before the Tribunal to persuade it that Mr Maisey has departed from that intention and we do not find that the appointment of Mr Maisey raises any issue of significance in the manner submitted.

Whether the Authorised Person is Biased.

The union also seeks an order requiring Mr Maisey to be disqualified from conducting the enquiry because of alleged bias. This submission is made because the applicant sees Mr Maisey as relying upon that part of the enquiry conducted earlier by Ms Reeves, and also in his having consulted the police officer responsible for the arrest and bringing of charges under the *Criminal Code* against Mr Burrows. It was submitted that the police officer was "a person with an axe to grind against Burrows".

It is agreed that the enquiry should be conducted in accordance with the rules of procedural fairness. In our view much of the submission of the union in this matter that procedural fairness has not been observed falls away once it is decided that it is not necessary to follow the procedures set out in Regulation 135. One of the rules of procedural fairness is that the enquiry be conducted by a person who carries no actual bias and of whom there is no reasonable apprehension of bias. In this case, as we understand the submission that has been made, it is not suggested that Mr Maisey is actually biased. Rather, that because of the above circumstances there is a reasonable apprehension of bias sufficient to warrant Mr Maisey not conducting the enquiry.

The principle to be applied is:

> "That a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it." (*R v Watson*; *ex parte Armstrong* (1976) 136 CLR 248 at pp258-263, as endorsed in *Livesey v New South Wales Bar Association* (1983) 151 CLR 288; and see too *Bradshaw v Kyle and Another*, Supreme Court of Western Australia, library No. 960063, 9 February 1996 unreported; *Carter v Drake and Others* (1992) 72 WAIG 736 and the authorities referred to therein.)

It is to be noted for the purposes of this case that Mr Maisey is not a decision maker. His purpose is "to enquire and report rather than sit in judgment" (per Malcolm CJ in *Gudgeon's case op. cit*. at p.26; and see the letter of authorisation to Mr Maisey (Exhibit A)). The decision maker in this matter is the Chief Executive Officer. For that reason it is, in our view, more difficult to establish that an authorised person is biased.

The detail of the complaint against Mr Maisey concerns the letter from him to Mr Burrows' solicitors of 20 January 1995 (exhibit 2 (64)). That letter states that Mr Maisey had interviewed the police officer, Detective Oversby, and "as a consequence I have received further information which I regard as relevant and possibly adverse to your client's interests. A transcript of my notes of the interview is enclosed". In our view

that letter reveals no bias on the part of Mr Maisey. There is nothing to suggest that Mr Maisey's report of his interview with Detective Oversby was other than impartial and Mr Maisey has forwarded the statement and interview transcripts to Mr Burrows.

If the union relies in particular upon Mr Maisey's comment that the "further information" may be "possibly adverse" to Mr Burrows then we do not find the comment leads to a conclusion of bias by Mr Maisey. His comment indicates nothing more than an awareness of information which he regards as relevant and he then draws this to the attention of Mr Burrows. Such a comment appears on the face of it to be a statement reasonably open to Mr Maisey. It is not a comment which reveals bias. In this regard, in relation to a decision maker a biased mind is "not necessarily a mind which has not given thought to the subject matter or one which, having thought about it, has not formed any views or inclination of mind upon or with respect to it" (*R v Commonwealth Conciliation and Arbitration Commission; Ex Parte Angliss Group* (1969) 122 CLR 546 at 554; *Laws v. Australian Broadcasting Tribunal* (1990) 170 CLR 70). Even if the evidence showed that Mr Maisey had "formed any views or inclination of mind" he would not be biased on the above authority even if he was a decision maker.

The union attacked Mr Maisey's partiality because he had, in fact, interviewed Detective Oversby. In our view however, bias is not able to be demonstrated merely because a person authorised to conduct an enquiry interviews a person who may not have an unprejudiced mind towards the teacher concerned. The question to be asked is: was it relevant to Mr Maisey's enquiry that he interview Detective Oversby? If it was relevant, then Mr Maisey has not been shown to be biased because he interviewed Detective Oversby and forwarded to Mr Burrows the record of that interview for Mr Burrows to comment upon. If it was not relevant to Mr Maisey's enquiry to speak to Detective Oversby then Mr Maisey may have exceeded his authorisation from the Chief Executive Officer. However, that raises a different issue than the issue of bias.

Mr Maisey's authority is to enquire into and report concerning the allegations received by the Chief Executive Officer and which the Chief Executive Officer believed may amount to misconduct. If, in the course of his enquiry into those allegations, Mr Maisey is told of different allegations, those other allegations are not for that reason added to the alleged misconduct which is the subject of the enquiry. Those other allegations cannot form part of the enquiry because they are not allegations which, pursuant to section s.7C, the Chief Executive Officer was of the opinion could, if proved as fact, constitute misconduct by Mr Burrows. Unless that occurs then the allegations being enquired into by Mr Maisey can only be the alleged misconduct which led to the Chief Executive Officer authorising an enquiry on 29 August 1994. The union submits (transcript pp 82-83) that Mr Maisey, in his further letter to Mr Burrows of 20 January 1995 (exhibit 2(64)) appears to include other allegations that were not part of the allegations into which he was authorised to conduct the enquiry and that he has in doing so exceeded his "terms of reference". For the reasons stated immediately above, it is not open to Mr Maisey to exceed his terms of reference but it is not apparent from the material before the Tribunal that he has done so. The union tendered a schedule of the various allegations cross referenced according to the union's understanding of the original source of the allegation (exhibit 6). Although Mr Maisey's letter does have a heading which states "Further allegations and material" that exhibit does not in fact reveal any allegation contained in Mr Maisey's further letter to Mr Burrows of 20 January 1995 which does not form part of either the material referred originally to the Chief Executive Officer (exhibit 2(50-63)) or by Mr Maisey at the time of his authorisation (exhibit 2(25-42)). If anything, the exhibit tends to suggest that the interview with Detective Oversby had relevance to the alleged misconduct and that Mr Maisey did not exceed his authorisation. Accordingly no ground has been established for the issuing of an order in the terms requested.

For the above reasons an order will issue dismissing the application.

Appearances: Mr A.S. Hodge (of counsel) and with him Ms H. Prince on behalf of the applicant.

Mr R. Hooker (of counsel) and with him Mr G.R. Edwards on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers' Union of Western Australia (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).

23 May 1996.

Order.

HAVING heard Mr A.S. Hodge (of counsel) and with him Ms H. Prince on behalf of the applicant and Mr R. Hooker (of counsel) and with him Mr G.R. Edwards on behalf of the respondent, the Government School Teachers Tribunal, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be dismissed.

(Sgd.) A.R. BEECH,
[L.S] Chairperson.