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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeals against decision of Commission in Court Session—

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

CORAM: ANDERSON J (Acting Deputy Presiding Judge)
SCOTT J
PARKER J

HEARD: 3 FEBRUARY 1997.

DELIVERED: 26 FEBRUARY 1997.

FILE NO/S: APPEAL IAC 15 of 1996.

BETWEEN: FISHER CATERING SERVICES PTY LTD
P & O CATERING PTY LTD
Appellants

AND

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

JUDGMENT—

ANDERSON J (Acting Deputy Presiding Judge):

For reasons which I now publish, I would decline to dismiss the appeal on the ground put forward by the appellant.

SCOTT J:

I am of the view that at this stage there is no right of appeal presently existing in this matter and, in my view, the Court should return the matter to the Commission in Court Session so that the application presently pending before that Court can be finally resolved. I publish my reasons.

PARKER J:

For reasons which I now publish, it is my view that the appeal is not from a decision within the meaning of s90 subs(1) of the Act and that if there has been an error of law in the reasoning of the Commission in Court Session to this point, it must wait until there is a decision before that error can be corrected by this Court on appeal. Therefore, this appeal should be dismissed and the matter remitted to the Commission in Court Session.

Catchwords:

Industrial law—Appeal—Right of appeal from "decision" of Commission—Meaning of "decision"—*Industrial Relations Act 1979 (WA)*, s90(1).

Words and phrases—"Decision"

Representation:

Counsel:

Appellants	:	Mr J B Blackburn (advocate)
Respondent	:	Mr D J Kelly (advocate)

Solicitors:

Appellants	:	Chamber of Commerce and Industry of WA
Respondent	:	Australian Liquor Hospitality and Miscellaneous Workers' Union

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

Director General of Social Services v Chaney (1980) 47 FLR 80

Hall v Braybrook (1956) 95 CLR 620

McCorry v Como Investments Pty Ltd 69 WAIG 1000

Ralph M Lee (WA) Pty Ltd v Fort (1991) 4 WAR 176

WA Pines Pty Ltd v Hamilton [1980] WAR 29

Case(s) also cited:

Nil

Library Number : 970070A

ANDERSON J:

This matter comes before this Court as an appeal under s90(1) of the *Industrial Relations Act* from the Commission in Court Session. The grounds of appeal include the ground that:

> "2. The Commission erred in law in holding that:
>
> (A) the Private Hospital Employee's Award 1972 rather than the Restaurant, Tearoom and Catering Worker's Award 1979 applied to employees of catering contractors in private nursing homes and hospitals;
>
> (B) employees of catering contractors in private hostels, nursing homes and hospitals were part of the ealth industry and not the contract catering industry."

When the matter was called on for hearing, Mr Blackburn, on behalf of the appellants, informed us that the appellants had come to the opinion that the appeal was incompetent as there was no "decision" within the meaning of s90(1) against which an appeal could be brought and he submitted that the appeal should therefore be dismissed. Section 90(1) provides, relevantly:

> "90(1) Subject to this section, an appeal lies to the court .... from any decision of .... the Commission in Court Session."

The basis of Mr Blackburn's submission that the appeal (his appeal) should be dismissed was that although the Commission in Court Session had delivered reasons for decision in which the above conclusions the subject of ground 2 of the grounds of appeal are expressed, the Commision had made no formal award, order or declaration in the form prescribed by ss 34(1) and 36(a) and had not complied with the requirements of s 35. These are the sections which prescribe the form of a decision and the procedures that are to be followed in bringing a decision into formal existence. Thus, for example, s34(1) provides that "the decision of the Commission shall be in the form of an award, order or declaration and shall in every case be signed and delivered..." Section 35(1) provides that decisions are to be drawn up in the form of minutes and gives to the parties the right to speak to matters contained in the minutes before the minutes are delivered as the decision of the Commission. Section 36 provides that every decision of the Commission shall be sealed, deposited in the office of the Registrar and be open to inspection by any person interested.

Mr Kelly, who appeared before us on behalf of the respondent Union, joined with Mr Blackburn in submitting that, in the absence of an instrument in the form prescribed by the subsections, there was nothing in respect to which this Court could exercise any appellate jurisdiction. Both Mr Blackburn and Mr Kelly urged us to dismiss the appeal on that ground, and only on that ground. The merits of the appeal were not gone into at all.

I should also say that, as I understood his submissions, Mr Blackburn did not contend that no decision at all had been made by the Commission. He accepted that the two conclusions or rulings which are set out in ground 2 of the grounds of appeal are decisions in at least one sense of the word but that, because the formal requirement of ss34, 35 and 36 of the Act had not been complied with in respect of them, they were not "decisions" within the meaning of s90(1). Mr Blackburn's case for dismissal of the appeal therefore depends on the correctness of the view that the word "decision" in s90(1) must be given the narrow meaning which it obviously has in ss34, 35 and 36 of the Act.

It seems obvious that these sections refer to a decision which is a final decision, that is, "a final dispositive act having ultimate operation"—*Ralph M Lee (WA) Pty Ltd v Fort* (1991) 4 WAR 176, at 181. However, it does not necessarily follow that the word "decision" in s90(1) is used in the same sense as in ss34 *et seq*. There is the clearest indication in the definition section of the Act that the word "decision" is not always to be so narrowly interpreted as to mean only the ultimate resolution of the proceedings before the Commission. In that section, which is s7(1), it is provided that:

> " "Decision" includes award, order, declaration *or finding*"
>
> and:
>
> "Finding" means a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate."

As Deane J pointed out in *Director General of Social Services v Chaney* (1980) 47 FLR 80, at 100:

> "The word "decision" is a word of indeterminate meaning. In some contexts, it can refer to the mental process of making up one's mind. In the context of judicial or administrative proceedings, the word will ordinarily refer to an announced or published ruling or adjudication. In such a context, the word "decision" may be apt to include the determination of any question of substance or procedure, including, for example, rulings on procedural questions such as whether particular evidence should be received, or the meaning of the word may be limited to a determination effectively resolving an actual substantive issue."

See also *Hall v Braybrook* (1956) 95 CLR 620, per Dixon J, at 635; *Penniel v Driffill*, reported as a note to *WA Pines Pty Ltd v Hamilton* [1980] WAR 29.

The question whether the decision of the Commission in Court Session referred to in s90(1) from which an appeal may be brought to this Court is the ultimate award, order or declaration in written form, signed and sealed by the Commission, and deposited in the Registry in accordance with ss34, 35 and 36 of the Act, or whether it is any "decision" as defined in s7, including any "finding" as defined in that section, or whether the word "decision" in s90(1) is to be given a meaning not as narrow as in ss34 *et seq* but not as wide as defined in s7, is therefore a difficult question.

In support of his argument that "decision" in s90(1) means the kind of decision dealt with in ss34 *et seq*, Mr Blackburn referred us to the case of *McCorry v Como Investments Pty Ltd* 69 WAIG 1000. In that case, the Full Bench heard argument on a preliminary point and, at the conclusion of argument and after a short adjournment, announced that it upheld the preliminary point and dismissed the applications before it. All of this occurred on 1 December 1988. At the time that it announced its conclusions, the Full Bench indicated that it would publish its reasons "in due course" and that the terms of its order "should be available in the near future". A formal written order of the Full Bench was prepared and lodged in the Registry on 23 December. An appeal to this Court was then instituted, some time after 23 December. On the hearing of the appeal in this Court, it was submitted that the appeal was incompetent because it had not been instituted within time, that is, within the time prescribed by s90(2), which provides:

> "(2) An appeal under this section shall be instituted within 21 days from the date of the decision against which the appeal is brought ...."

The question was whether the "decision" was the oral announcement by the Full Bench on 1 December of the conclusion which it had reached (in which case the appeal was out of time), or whether it was the formal order of 23 December. On behalf of the appellants, it was argued that the "decision" referred to in s90(2) was the document called for by ss34, 35 and 36, so that time did not begin to run under s90(2) until 23 December. This submission was upheld. The President of the Court, Brinsden J, said, at 1,002:

> "It seems to me therefore that what s34 *et seq* contemplates is that the decision of a Commission shall be contained in the order of the Commission signed and delivered, the delivery being the depository of it in the office of the Registrar. Upon the latter event happening the decision of the Full Bench and/or the Commission or Commission in Court Session has been pronounced. Accordingly, the relevant date for the commencement of effluxion of time within which an appeal may be brought is 23 December. This appeal therefore is competent."

Kennedy J said, at 1,003:

> "In my opinion ss34, 35 and 36 make it sufficiently clear that the "decision" of the Commission is a document. It is to be "signed and delivered". Before delivery, it is to be drawn up in the form of minutes, the minutes as varied are to be delivered as the decision of the Commission and the decision is to be sealed, deposited in the office of the Registrar and be open to inspection. It is, therefore, in my view, the date of the document which is the critical date."

Rowland J declined to express an opinion on the point, considering it unnecessary to do so, as the court decided that the appeal should fail in any event, on its merits.

Mr Blackburn contended (and Mr Kelly did not dispute) that this case lays down, in effect, that a decision is not a "decision" for the purposes of s90(1) unless it is a decision in respect of which all of the requirements of ss34, 35 and 36 have been complied with.

I do not consider the judgment in *McCorry* should be taken that far. There was no question in *McCorry* as to whether there had been a decision from which an appeal could be brought or that it was a final decision, intended to have ultimate operation in the sense explained in *Ralph M Lee (WA) Pty Ltd v Fort* (*supra*). There was such a decision, and it was a decision to which ss34, 35 and 36 plainly applied. The question which Brinsden and Kennedy JJ answered was the question which of the two activities (the oral announcement of the conclusion or the signing and sealing and lodgement in the Registry of the formal document) should be regarded as starting the running of time for the purposes of s90(2). The case decides no more than that where the tribunal does make a decision which is reduced to writing and otherwise perfected in accordance with ss34, 35 and 36, time begins to run under s90(2) when the decision is perfected by delivery in the prescribed form. The

court in that case gave no consideration to the extended definition of "decision" in s7(1) and did not (because it was not asked to) decide whether the extended definition applies to the word "decision" in s90(1). Whether it does or whether it does not and, if it does not, whether some other meaning should be given to the word and, if so, what meaning, therefore remain questions which are unanswered and, in this case, largely unargued. There is something to be said for the view that an extended definition should be given to the word "decision" in s90(1). It is not easy to see why the right of appeal should depend on whether the Commission had complied with the requirements of form prescribed in ss34, 35 and 36. On the other hand, it might be thought inconvenient and inappropriate, and therefore unintended, that there should be a right of appeal from every incidental ruling or direction made in the course of proceedings in the Commission. Perhaps there is an intermediate position which would give to the word "decision" in s90(1) a less extensive definition than it is given in s7 but a wider meaning than it appears to have in ss34 *et seq*. Then there is the question whether the determinations or rulings under challenge in the grounds of appeal in this case fall within whatever is held to be the true meaning of s90(1)

Because these are important and difficult questions, I would be most reluctant to express a concluded view on them without hearing full argument. I think we are being asked to do so after hearing only what was, in effect, a consent application in which the argument was confined to the appellant's submission that there was no right of appeal unless there was an instrument in the form prescribed in ss34(1) and 36(a).

I would decline to dismiss the appeal on the particular ground (which I understand to be the only ground) put forward.

SCOTT J:

When this appeal was called on before this Court, Mr Blackburn for the appellants indicated to the Court that he wished to take a preliminary point. That point was, that an issue had arisen between the parties, as to whether or not an appeal lay to this Court from the Commission in Court Session in the circumstances of this case.

Under s90(1) of the *Industrial Relations Act 1979 (WA)* ("the *Industrial Relations Act*") an appeal lies to the Western Australian Industrial Appeal Court:

> "... from any decision of the President, the Full Bench or the Commission in Court Session on the ground that the decision is erroneous in law or is in excess of jurisdiction but upon no other ground."

The substantive matter originally came before the Chief Commissioner of the Western Australian Industrial Relations Commission sitting alone in March 1993 to determine a preliminary issue. Following the Chief Commissioner's decision on 3 November 1993, the matter subsequently came before the Commission in Court Session to determine whether a new award should issue to cover the employees of employers engaged in the provision of cleaning, catering and garden services pursuant to a contract to principals engaged in private health care and/or associated industries.

That application came before the Commission in Court Session on 11 March 1994. After a hearing which included the taking of evidence on 6 April 1994, the Chief Commissioner announced the unanimous findings of the Commission in Court Session on two preliminary issues that had been argued before that court. The first of those issues was whether the applicant union had discharged the burden on establishing that on the substantial merits of the case an award should issue. The second issue was whether as a matter of law the Commission should determine whether the application should be considered as a "special case" and, in the alternative, if the status as a special case was not as a matter of law to be considered as a preliminary issue, then it should be determined as a matter of discretion.

In relation to those two issues, the Chief Commissioner announced on that date:

> "Briefly our position is this. We believe that *prima facie* the applicant union has established that an award should issue. At this time it should not be taken as an indication of the terms and conditions which should issue or the extent of award coverage of the new award. Suffice it to say that we have formed the view that the award should apply to the health care industry. Secondly, we reject the argument that as a matter of law a special case has to be determined before anything else is addressed. However, on what has been put to us, we do not believe that it is necessary for this application to be considered as a special case.
>
> It is, however, necessary for this application to be considered within the context of structural efficiency. Therefore, we consider it incumbent upon the applicant to identify the key minimum classification or classifications within the proposed structure. We say that it is insufficient to argue that that course can await the outcome of the minimum rates adjustment exercise in the public sector. It must be appreciated that, although we have determined that *prima facie* an award should issue, there are fundamental issues of award coverage and industry identification which we will need to address so that the application before us can be dealt with comprehensively.
>
> We propose to adjourn so that our reasons for decision in all of these matters can be set down."

The reasons for decision of the Commission in Court Session were ultimately delivered on 16 August 1996 when the Commission in Court Session delivered detailed reasons for the decision. At the end of that decision at page 12 of the reasons for decision in No A7 of 1991, the Chief Commissioner delivered the unanimous reasons for decision of the Commission in Court Session and included in that material at page 12 is the following:

> "Thus, the clear picture that emerges from all the above mentioned material is that Aged and Disabled persons' hostels are now patently a major and integral part of the health care industry and that catering within these establishments form an important element in the overall provision of proper care to the residents. The legislative requirements for establishing and maintaining standards of care for the aged and disabled reinforce this view.
>
> For these reasons it is now appropriate that catering contractors operating in the health care industry be deemed, whilst so engaged, to be part of that industry.
>
> At this time, we are prepared to accept that the Union has discharged the burden of establishing that, *prima facie*, an award should issue. That should not be taken to have disposed of the terms and conditions which should apply. Submissions have not been received on matters relevant to those issues." [AB 65]

The Commission in Court Session then went on to deal with the second preliminary issue relating to a "special case" which is not relevant for the purposes of these reasons.

That decision of the Commission in Court Session was the subject of appeal to this Court. The grounds of appeal are as follows:

> "1 The Commission acted in excess of jurisdiction in that it failed to comply with s29A(2) of the Act.
>
> 2 The Commission erred in law in holding that:
>
> (A) the Private Hospital Employees' Award 1972 rather than the Restaurant, Tearoom and Catering Workers' Award 1979 applied to employees of catering contractors in private nursing homes and hospitals;
>
> (B) employees of catering contractors in private hostels, nursing homes and hospitals were part of the health industry and not the contract catering industry.
>
> 3 The reasons for decision of the Commission issued on 16 August 1996 could not, by reason of delay, be regarded as the true reasons for decision."

The appellant sought to have this Court quash the decision of the Commission in Court Session and have the matter remitted to that Court for further hearing and determination according to law.

When this appeal commenced, Mr Blackburn, on behalf of the appellants, raised the preliminary issue as to whether this matter was a proper appeal in view of the fact that no orders had emanated from the Commission in Court Session which had made no formal orders following the publication of its reasons on 16 August 1996.

When the appeal came on for hearing, Mr Blackburn, for the appellants, advised the court that the preliminary difficulty arose because the Commission in Court Session had made no formal award, order or declaration in relation to the application but had only delivered reasons for decision. Mr Kelly, on behalf of the respondent, agreed with Mr Blackburn's submission that this Court had no jurisdiction because there had been no decision for the purposes of the *Industrial Relations Act* from which to appeal. Mr Blackburn, however, invited the court to consider whether or not an appeal did lie in the circumstances, and for these reasons the court reserved its decision on that issue.

The starting point in examining the argument is that the word "decision" in s90 is defined in s7(1) of the *Industrial Relations Act* in the following way:

> "'Decision' includes award, order, declaration or finding.

The word 'finding' is also defined in the same section of the Act in the following terms:

> "'finding' means a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate."

The first thing to notice about each of those definitions is that they are circular in that the word "decision" includes a "finding" and the definition of "finding" means a "decision". That having been said, however, for the purposes of deciding this preliminary point, the important aspect of the matter is to consider whether, within the reasons of the Commission in Court Session, it can be said that there was a "finding" sufficient to come within the definition of "decision" so as to attract the appellate jurisdiction of this Court.

In considering that issue, in my opinion the definition of "finding" is sufficiently wide to include any interlocutory ruling which disposes of an interlocutory matter. That is not, however, to say that a ruling in the course of a decision on a preliminary point comes within that category.

The important aspect of the matter is to consider the meaning of the word "finding" as it is used in the context of the *Industrial Relations Act*.

In that respect, it is instructive to note that in the provisions of ss23B and 24 of the *Industrial Relations Act*, the word "finding" is used. In s23B(3) the Act provides:

> "(3) Without limiting the generality of subsection (1) the Commission may confirm, modify or reverse any decision, determination, ***finding*** or declaration appealed against.

Section 24(1) provides:

> 24(1) The Commission has jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter and a ***finding*** by the Commission on that question is, subject to sections 49 and 90, final and conclusive with respect to those proceedings."

The reference in s24(1) to s90 is a reference to the appellate jurisdiction of this Court as set out earlier in these reasons. It follows, in my opinion, that a finding of the type referred to in ss23B and 24 of the *Industrial Relations Act* are findings of the type that would attract the appellate jurisdiction of this Court. However no appeal lies from a finding under s24(1) because s24(2) expressly excluded appeal rights until either:

> "(a) those proceedings have been concluded; or
>
> (b) leave to appeal is granted by the Commission making that determination."

On that construction of the Act, the word "finding" has a very limited meaning in relation to proceedings that have commenced but are not concluded in circumstances other than where an interlocutory application is disposed of.

As can be seen from these reasons, the appellants are seeking to bring an appeal in relation to the rulings of the Commission in Court Session with respect to the preliminary issues that were there determined. Those preliminary issues required resolution because it would have been wasteful for the court to have settled the terms of the relevant award until those issues were resolved.

Had the Commission in Court Session finally resolved the issue before it for determination, (namely, the issue of the award sought by the applicant) then there is little doubt that such a determination would be a "decision" within the meaning of s7 of the *Industrial Relations Act*.

Had that stage been reached, then, in my view, the provisions of the *Industrial Relations Act* concerning the form of decision (that is ss34, 35 and 36) would have become operative. In that context, and only in that context, in my view is the decision in *McCorry v Como Investments Pty Ltd* 69 WAIG; 11 April 1989 Brinsden J (President) Kennedy and Rowland JJ of relevance. In that case, the court was concerned with a provision of the *Industrial Relations Act* which required an appellant to institute an appeal within 21 days from the date of the decision against which the appeal was brought. The issue in that case was whether the decision for the purposes of that section was referenced to the date upon which the decision was announced by the court or the date upon which the formal order was made under the relevant provisions of the *Industrial Relations Act*. In that context, the court had to examine the provisions of s34 of the *Industrial Relations Act* which deals with the formal issue of an award, order or declaration. The court held that for that purpose time ran from the formal issue of the order rather than the date upon which the decision of the court was announced.

In my view, the case of *McCorry v Como Investments Pty Ltd (supra)* has little to say in relation to the problem presently under discussion. The question here is whether the word "finding" as defined in the *Industrial Relations Act* is sufficiently wide to encompass the matter in relation to which the appellants seek to appeal in this case.

With some hesitation I have ultimately reached the view that the word "finding" as defined is not sufficiently wide to encompass the present situation. The challenge which is here being made by the appellant is a challenge to the reasons of the Commission in Court Session in relation to the two preliminary points that were taken at the hearing. Those points were not taken by way of interlocutory application which may have attracted the appellate jurisdiction of this Court (although I express no concluded view on that issue) but were rulings made in the course of the delivery of reasons on preliminary issues.

In the course of delivery of reasons, judicial bodies commonly make many findings both of fact and of law. In this case, a perusal of the reasons of the Commission in Court Session reveals that many findings of both law and fact were made in the course of those reasons. Whilst ultimately the Commission in Court Session has reached a view disposing of the two preliminary issues, I have come to the conclusion that the resolution of those questions cannot be either a "decision" or a "finding" within the meanings of those terms in the *Industrial Relations Act* so that the appellate jurisdiction of this Court is not available.

In support of that view, in my opinion, it should be noted that the *Industrial Relations Act* sets up a two tier appeal structure which comprises the following:

1. Appeals to the Full Bench which are governed by s49, and
2. Appeals to the Industrial Appeal Court, governed by s90.

In relation to the former, an appeal can be instituted against a "finding" of a Commissioner but only in the limited circumstances permitted by s49(2a). That section relevantly states:

> "49 (2a) An appeal does not lie under this section from a finding unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal should lie."

In relation to appeals to the Industrial Appeal Court there is no equivalent provision to s49(2a). This leads me to the conclusion that appeals against a "finding" are limited to appeals to the Full Bench of the Commission and that no right of appeal in relation to a "finding" exists in relation to the Industrial Appeal Court.

Further, the definition of finding is consistent with the decision-making process at a first instance hearing rather than in appellate proceedings so that in relation to an appeal from a

first instance hearing, it is appropriate to have a right of appeal from a "finding" but in relation to an appeal from an appellate process it is less appropriate.

If that view is correct, it then follows that the present proceedings in the court below must continue until a decision is reached in relation to the issue and terms of the award before a right of appeal to this Court properly lies. In reaching that conclusion I have not overlooked the fact that the definition of "decision" found in s7(1) of the *Industrial Relations Act* includes a "finding". That definition is necessary however, to comprehensively cover appeals to the Full Bench as well as the Industrial Appeal Court.

In the circumstances, therefore, in my view, the issue placed before us by Mr Blackburn on behalf of the appellants, and acceded to by Mr Kelly, should be resolved by this Court determining that no right of appeal presently exists in this matter. In my view, this Court should return the matter to the Commission in Court Session so that the application presently pending before that court can be finally resolved. I would hear the parties as to the formal orders necessary for that result to be achieved.

PARKER J:

An appeal was instituted pursuant to s90(1) of the *Industrial Relations Act 1979* following reasons for decision delivered by the Commission in Court Session on 16 August 1996.

A preliminary difficulty was raised before us as to whether there is a "decision" within the meaning of s90(1) from which an appeal can be brought. The Commission in Court Session has delivered reasons for decision but has made no formal "award, order or declaration" as contemplated by s34(1), nor has the procedure contemplated by ss35 and 36—minutes, delivery, sealing and depositing in the Office of the Registrar—been followed. Nor has there been a waiver of the requirements of s35 as allowed by s35(4).

It is provided by s90(1) that an appeal will lie to this Court from a "decision" of the Commission in Court Session on the ground that the decision is erroneous in law or is in excess of jurisdiction. By s90(2) the appeal "shall be instituted within 21 days from the date of the decision....".

The difficulty perceived arises because "decision" is defined by s7(1) of the Act to include "award, order, declaration or finding". The same provision defines "finding" as follows:

> "Finding means a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate".

It is possible to read the definition of "finding", and therefore the meaning of "decision", to include any form of ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate. Thus "ruling" could be read so extensively as to allow virtually any interlocutory ruling on matters such as evidence, procedure or similar incidental matters to come within the definition. Such a result is so impractical and could be so productive of undue interference with proceedings before the President, the Full Bench or the Commission in Court Session that it is difficult to accept that such an extended meaning could have been intended.

A more limited meaning is suggested by s24 of the Act which provides as follows:

> "24 (1) The Commission has jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter and a finding by the Commission on that question is, subject to sections 49 and 90, final and conclusive with respect to those proceedings.
>
> (2) A determination under subsection (1) is not a decision for the purposes of section 49 or 90 unless and until—
>
> (a) those proceedings have been concluded; or
>
> (b) leave to appeal is granted by the Commission making that determination."

This provision indicates a reason why a "finding" has been included in the definition of "decision". A finding that a matter is an industrial matter is significant to the jurisdiction of the Commission in many proceedings and it is usual for that issue to be raised as a preliminary matter so that the ruling on that issue is often made before the other merits are entered into. Hence that the ruling does not normally "finally decide, determine or dispose of the matter to which the proceedings relate", within the meaning of the definition of "finding" in s7(1). Section 24(2) expressly provides that a finding by the Commission on this issue is not a decision for the purposes of s90 unless and until the proceedings have been concluded or leave to appeal has been granted by the Commission. This takes care of the difficulty identified earlier of appeals causing undue interference in the orderly course of proceedings before the Commission. Section 24, however, provides an express indication that a finding, at least a finding by the Commission, is within the meaning of "decision" in s90. That confirms that in s90 "decision" is intended to have the meaning defined by s7(1).

Section 24 deals similarly with s49 and 90. Section 49 deals with appeals to the Full Bench from a decision of the Commission constituted by a Commissioner. Section 49(2a) is however significant. It provides:

> "An appeal does not lie under this section from a finding unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal should lie."

This provision again provides confirmation that "decision" in the context of appeals, includes a finding; in other words "decision" is used in the defined sense. Subsection (2a) provides a means by which undue interference with proceedings before the Commission are precluded. There is no equivalent provision in s90 regulating appeals to this Court. There would appear to be a strong case for a similar provision allowing this Court to determine whether, in the public interest, an appeal should lie from a finding. In the absence of such a provision, there would appear to be scope for the appellate processes of this Court to interfere unnecessarily with the conduct of proceedings below.

I should also refer briefly to s23B of the Act which was inserted to confer on the Commission jurisdiction with respect to appeals by teachers under the *Education Act 1928*. Section 23B(3) includes a provision that the Commission may confirm, modify or reverse any findings appealed against under that section. Section 23B seems to be a self-contained provision dealing with a special jurisdiction of the Commission and outside the scope of its ordinary jurisdiction. The notion of a finding in that context appears to arise from the *Education Act* rather than the *Industrial Relations Act*. This explains, no doubt, the provision of s49(2b) which expressly provides that an appeal does not lie under s49 to the Full Bench from a decision of the Commission on an appeal under s23B.

The Commission in Court Session must be taken from its actions to have held the view that the issues dealt with in the reasons for decision are not matters that came within the meaning of "an award, order, or declaration" as used in s34(1)—perhaps more strictly do not constitute a decision which could be given in the form of an award, order or declaration. Similarly, the Commission in Court Session has not felt obliged, no doubt for that same reason, to follow the requirements of ss35 and 36. The parties have not argued to the contrary before us, although they have contemplated that if this preliminary difficulty is held to be of substance, one possible solution would be to attempt to have the Commission in Court Session use ss34(1), 35 and 36. While the matter has not been fully argued before us, I do not presently see any reason to think that ss34(1), 35 and 36 were intended to apply to findings of the type dealt with in the reasons for decision. It is convenient, therefore, to deal with this point of preliminary difficulty on the assumption that the Commission in Court Session was correct in not following ss34(1), 35 and 36. If the question comes to be fully argued in another appeal there may be reason to reach a different view, but there is no occasion to do so in the present appeal.

As has been indicated in the reasons of the Presiding Judge, in ss34(1) and (2) and in ss35 and 36 the word "decision" appears to be used in a context and for purposes which are more consistent with, or indicative of, a final decision. Whatever be the full and proper understanding of the word "decision" in those provisions, it should be noticed that ss34(3) and (4) are dealing with a different subject matter from the other

provisions which I have just identified. Section 34(3)and (4) are each concerned to exclude appellate or review procedure by any other court, other than those provided expressly by the Act. Whereas s34(1) requires for its purposes that a decision shall be in the form of an "award, order or declaration", s34(4) protects from any form of challenge, appeal or review, any "award, order, declaration, finding, or proceeding". The context and purpose suggests that s34(4) was intended to have, and should be given, a wider reach than s34(1), not only in respect to the express reference to a "proceeding" but also in its express reference to a "finding".

For the reasons indicated by the Presiding Judge and Scott J, I do not see that the decision of this Court in *McCorry v Como Investments Pty Ltd* 69 WAIG 1000 is determinative of the present preliminary difficulty. The views I have formed are, however, consistent with that decision.

These observations are sufficient to identify that there are a number of difficulties in the construction of the Act. It seems likely that these difficulties arise from the somewhat piecemeal development of some of its provisions.

For present purposes, and recognising that all aspects have not been fully argued, the views I have formed are that the word "decision" in s90 should be read more widely than a decision in the form of an award, order or declaration within the meaning of s34(1) of the Act. Further, that for the purposes of s90 an appeal lies from a decision which includes a "finding" as defined in s7(1) of the Act. While the language of that definition is capable of quite a range of meanings, it is unlikely to have been intended that all forms of evidentiary, procedural and incidental rulings would come within its meaning. A finding by the Commission pursuant to s24(1) that a matter is an industrial matter clearly comes within the meaning as defined of "finding", and thereby is subject to appeal under s90. However, s24(2) precludes such an appeal until the conclusion of the proceedings unless leave is granted by the Commission. While s24(1) may explain the inclusion of "finding" in the definition of "decision", there is no justification presently apparent to me for limiting the scope of "finding" to a finding within the meaning of s24(1). My present impression is that there is an oversight in the drafting in that "finding" has been defined more extensively than the provisions of s24(1) require, thus leaving open the prospect of appeals to this Court in respect of a number of rulings which, while not finally deciding, determining or disposing of matters, are nevertheless of more significance in the proceeding than mere rulings on points of evidence, procedure and other incidental matters. It seems to me that a like deficiency existed with respect to appeals from the Commission constituted by a Commissioner to the Full Bench and this deficiency was dealt with by the amendment which added s49(2a).

The appeal seeks to raise for our consideration two matters dealt with in the reasons for decision of the Commission in Court Session. The first is the view of the Commission that the *Private Hospital Employees' Award 1972*, rather than the *Restaurant, Tearoom and Catering Workers' Award 1979*, applied to employees of catering contractors in private nursing homes and hospitals. Secondly, is the view that employees of catering contractors in private hostels, nursing homes and hospitals were part of the health industry and not the contract catering industry. These are each steps in a process of reasoning which led the Commission to accept that the present respondent had discharged the procedural burden of establishing that, *prima facie*, an award should issue. That threshold having been reached, there must now follow the full processes by which the terms and conditions of the contemplated award are determined. When an award finally issues it is clear that ss34(1), 35 and 36 would apply. In the ordinary processes of the Commission, however, the question whether an award should issue will not be revisited in the present proceeding.

There remains the difficult question, however, whether the two matters identified in the grounds of appeal may properly be seen as "findings" as defined in s7(1). The ambivalent language of the definition provides little guidance so that the process of reasoning becomes, necessarily, somewhat arbitrary. Nevertheless, keeping in mind the context, which is an appeal to this Court, it seems to me that the two matters raised by the grounds are more naturally to be seen as mere steps in a process of reasoning toward a finding, than themselves a finding.

It follows, in my view, that the grounds of appeal are not from a decision within the meaning of s90(1) of the Act. If there has been an error of law in the reasoning of the Commission in Court Session to this point, it must wait until there is a decision before that error can be corrected by this Court on appeal.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 15 of 1996.

IN THE MATTER of an appeal against the decision of the Commission in Court Session of the Western Australian Industrial Relations Commission in Matter Numbered A 7 of 1991 dated the 16th day of August, 1996.

BETWEEN

Fisher Catering Services Pty Ltd and Another
Appellants

and

The Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
Respondent.

BEFORE:

JUSTICE ANDERSON (ACTING DEPUTY PRESIDING JUDGE)
JUSTICE SCOTT
JUSTICE PARKER.

26 February 1997.

Order.

HAVING heard Mr J.B. Blackburn for the Appellants and Mr D.J. Kelly for the Respondent, THE COURT HEREBY ORDERS that the appeal be dismissed and the matter be remitted to the Commission in Court Session for hearing and determination.

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.

Warrick Thornander
(Appellant)
and
Minister for Education
(Respondent)

No. 1838 of 1996.

BEFORE THE FULL BENCH.

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

18 February 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission, which decision was made on 28 November 1996, and by which decision the Commission dismissed an application made by the appellant, Mr Warrick Thornander, whereby he claimed unpaid contractual benefits under his contract of employment with the respondent.

It is against that decision that the appellant now appeals on the following grounds, which I quote verbatim (see pages 2-3 of the appeal book)—

"A. STATEMENT PAGE 7 OF A R BEECH REASONS FOR DECISION BEING INCORRECT IN SAYING "THE PRINCIPAL STATED THE NEITHER HE NOR THE DEPUTY PRINCIPAL NOR THE REGISTAR OF THE SCHOOL HAD PHONED ME STATING I WAS NO LONGER TO ATTEND THE SCHOOL AND THEY HAD LOOKED TO OR EMPLOYED ANOTHER GARDENER I WAS NO LONGER TO ATTEND, FOR THAT PRINCIPAL SAID IN HIS EVIDENCE HE SAID THAT ANOTHER PERSON MAY HAVE PHONE WITHOUT HIS KNOWLEDGE. HE DIDN'T KNOW. THIS IS CLEAR IN THE EVIDENCE.

B. STATEMENT PAGE 7 OF A R BEECH REASONS FOR DECISION THE ONUS OF PROVING THAT I HAD NOT BEEN ALLOWED BY MY EMPLOYER A BENEFIT IN WHICH I WAS ENTITLED WAS STATED CLEARLY BY HASTIE AT CONFERENCE. HE NOR ANY OTHER PERSON'S FROM EDUCATION DEPARTMENT OFFERED ME ANY OTHER WORK AT SOUTH KENSINGTON PRIMARY SCHOOL. I WAS TOTAL PREVENTED FROM WORKING AT SOUTH KENSINGTON PRIMARY SCHOOL ONE MONTH SHORT OF MY CONTRACT WITH THE EDUCATION DEPARTMENT.

C. STATEMENT PAGE 8 OF A R BEECH REASONS FOR DECISION REGARDING MS ROGERS SPENDING TIME ON THE PHONE WITH ME REGARDING 1 WEEK IN LIEU AS MISUNDERSTOOD BY COMMISSONER BEECH. MS ROGERS HAD OFFERED 1 WEEK IN LIEU SOME WEEKS BEFORE PHONE CALL SAYING I STILL WORK FOR EDUCATION DEPARTMENT AT SOUTH PERTH SCHOOL SO THEY DON'T HAVE TO PAY THIS PAYMENT. SHE WAS STATING FACTS DENCE LONG CONSIDERABLE PHONE CALL NOT TO BE USED OUT OF CONTEXT BY COMMISONER BEECH AGAINST ME.

D. AT NO STAGE HAS THE EDUCATION DEPARTMENT EVER DENIED MR HASTIE INSTIGATED MY CONTRACT OF EMPLOYMENT VIA LADY AT SOUTH KENSINGTON PRIMARY SCHOOL HENCE COMMISONER A R BEECH SHOULD NOT CONDEM ME IN HIS FINDINGS AS JUST DIDN'T GO BACK TO SOUTH KENSINGTON PRIMARY BECAUSE OF LESS HOURS. "I WAS TOLD NOT TO ATTEND SOUTH KENSINGTON AT ALL."

BACKGROUND

Mr Thornander, the appellant, was employed as a gardener by the respondent for approximately 20 hours per week at the South Perth Primary School. His conditions of employment were governed by the Gardeners (Government) 1986 Award No 16 of 1983.

In March 1996, the principal of the South Kensington Primary School, Mr Irvine Harold Phillips, asked Mr Thornander whether he would be able to work as a gardener at that school as well due to the absence of one of that school's two gardeners for medical reasons. Mr Thornander accepted that offer and commenced to work the additional hours on 20 March 1996.

Mr Thornander claimed that the arrangement was for a two months' fixed term period and for the hours set out in his claim. He claimed that the respondent stopped the arrangement after one month and the amount of his claim was for payment of wages he said were due for the second month, which was not worked by him.

The respondent's case was that no agreement was ever reached which would involve the regular paying of overtime, and, further, that Mr Thornander was not prevented from performing additional work at South Kensington Primary School for the second month. Rather, the respondent said that Mr Thornander was told that if he worked at South Kensington Primary School it would not involve the working of overtime hours.

It is not in issue and was not in issue that Mr Thornander was an employee.

CONCLUSIONS

This was a discretionary decision as that is described in Norbis v Norbis 65 ALR 12 (HC).

Further, this appeal raised issues similar to those considered by the High Court in Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC) per Brennan, Gaudron and McHugh JJ at page 479 where Their Honours said—

> "... a finding of fact by a trial judge, based on the credibility of a witness, is not to be set aside because an appellate court thinks that the probabilities of the case are against—even strongly against—that finding of fact. If the trial judge's finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the judge "has failed to use or has palpably misused his advantage" or has acted on evidence which was "inconsistent with facts incontrovertibly established by the evidence" or which was "glaringly improbable"."

(See also Gilmore and Another v Cecil Bros and Others 76 WAIG 4434 (FB) and Gromark Packaging v FMWU 73 WAIG 220 (IAC)).

THE EVIDENCE

Mr Thornander's evidence, summarised, was that he was employed as a gardener by the Education Department at South Perth Primary School. He was also employed at South Kensington Primary School because they were looking for a gardener. The principal at South Perth conveyed this to him. The gardener there was having an operation and would be absent from work for some time. The job was to run for about two months. It was a full-time gardening job (see exhibit 3).

The appellant worked for one month at South Kensington Primary School. After the first month Mr Thornander phoned through to find out where his wages were because his wages had not arrived. He said that the lady to whom he spoke said that they were about to advise the principal that Mr Thornander had to stop working at South Kensington Primary School because they could not employ him at two schools. He said that she told him that they did not pay overtime.

The deputy principal telephoned Mr Thornander and told him not to come in because they had employed another gardener. He said that that was how he was terminated, verbally.

After that he had conversations with persons at the Education Department concerning what his entitlements were. They did not pay him an amount in lieu of notice.

Mr Thornander was cross-examined by Mr Rigg on behalf of the Education Department. Mr Thornander admitted that Mr Irvine Harold Phillips, the principal at South Kensington Education Support School, had told him that he would not be able to work over the 38 hour week. He stopped work at South Kensington Primary School on 18 April 1996. He did, however, continue employment with the Department, continuing, in particular, at South Perth Primary School. He said that he did not go back to South Kensington Primary School because the deputy principal of that school told him "We've already found another gardener. Don't bother coming in". (In submissions to the Full Bench he said that this discussion occurred with the school registrar).

In cross-examination, he said, too, that the Department wished to stop the overtime. He also said that he was told (see page 40 of the transcript at first instance (hereinafter referred to as "TFI")) that, if both principals were happy working 38 hours between them, to do it that way.

There was evidence from Mr Irvine Harold Phillips, principal of South Kensington Education Support School. He said that the permanent gardener there had to have a neck operation in March 1996, and he was to be off for an indefinite period. They were looking to replace as much of his time as they could and preferred to employ somebody. As a result of some inquiries he met Mr Thornander. He said that he explained to Mr Thornander that he did not expect him to work

the full hours. "I did explain to Mr Thornander that if we went over the allocated time there were likely to be problems" (see page 47 (TFI)). He told Mr Thornander later that he had to work the hours which it was necessary to work between 6.00 am and 6.00 pm, because Mr Thornander had been starting work at 5.00 am. He made the hours of work clear at the beginning. He said that he did not have the role of approving Mr Thornander's hours (see page 49 (TFI)). He specified that work had to be within the prescribed hours that were allowable. There was another part-time gardener working there at the time. He did not need a full-time gardener. Mr Phillips said that he told Mr Thornander that the gardener would be off for a fairly indefinite length of time up to two months or longer. They did not know, simply because they did not know when he would recover. They did take on another gardener full-time in his place. They took him on full-time because they did not want to upset Mr Thornander's working conditions in the other school. He reiterated that the work had to be done within the prescribed hours that were allowable. Mr Phillips said that he thought that it was Mr Thornander's choice that he left within two months. Mr Phillips said that he did not remember anything about termination at all. He denied terminating Mr Thornander's employment. He did not believe that Mr Thornander was terminated. He believed that he was already an employee of the Department and the additional hours ceased (see page 55 (TFI)).

There was evidence from Michelle Ann Rogers, an industrial officer with the Education Department. She said that she became involved in this matter because the personnel and payroll officer had raised the payment of two weeks overtime with her. Mr Thornander was working 60 hours per week and another industrial officer explained in her presence that as a regular occurrence they could not allow employees to work 60 hours per week because of workers compensation and occupational health and safety reasons.

About two weeks later, Mr Thornander rang Ms Rogers. Mr Thornander said that he had been terminated from his employment and was entitled to a payment. Ms Rogers checked and found that he was still employed. She told him that he had not been terminated. 18 April 1996 was the last date when he worked at South Kensington Primary School. He was paid for overtime up until then. She confirmed that he was not terminated (see page 59 (TFI)). She also said that the Department had told him that he could not work for more than 40 hours per week.

The evidence was quite clear that Mr Thornander was employed by the Minister because the Department acted in the matter on his behalf.

The Commission at first instance found correctly that the appellant was employed by the Minister at the South Perth Primary School as a gardener. The Commission found correctly that as part of his contract of employment by the Minister the appellant was employed as a gardener at the South Kensington Primary School as well. There was no separate contract of employment; there was a variation of the contract of employment by the Minister whereby the appellant worked at South Kensington Primary School whilst the gardener there was on leave with health problems.

It is quite clear, having seen the witnesses, that the Commission at first instance accepted the evidence of the principal at South Kensington Primary School, Mr Phillips, that he made it clear to Mr Thornander at the outset that if the hours he worked at South Perth Primary School and the hours he worked at South Kensington Primary School exceeded the ordinary hours ((ie) 38 hours per week) then this was likely to be queried by the Department and not permitted. Once the Commission preferred the evidence of Mr Phillips to that of Mr Thornander then the Commission was entitled to so find, because that was Mr Phillips' evidence.

The Commission found, too, and it was not established otherwise on the evidence that it was part of the appellant's contract of employment, that he would not be paid overtime on a regular basis as a result of working part-time at two separate schools; nor was there evidence that overtime payments were a guaranteed part of his contract of employment. It followed that the Commission was entitled, as it did, to so find.

The Commission found that the duration of the work at South Kensington Primary School was to be for a minimum of two months and to end on 3 June 1996. That finding was not challenged before us.

In fact, the appellant ceased work on 18 April 1996. His entitlement to employment over that period was clearly a benefit for the purposes of s.29(1)(b)(ii) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), and there was no submission to the contrary before the Full Bench.

There was no evidence that Mr Hastie, an industrial officer with the Department, or any other person, prevented the appellant from working until 3 June 1996. He was told again what Mr Phillips had told him at the outset that he could not work overtime and that he would no longer be paid it. Indeed, he had been earlier told by Mr Phillips that he could not start work before 6.00 am.

On the evidence, accepted by the Commission at first instance, it was perfectly clear that the appellant was not dismissed from his employment. Indeed, he remained in his employment. The Commission found that the appellant believed that his employment was terminated, but, on the evidence, he was not. As the Commission found, Ms Rogers, in her evidence, spent considerable time informing the appellant that his employment had not been terminated. It is quite clear that he was merely being prevented from working in excess of 38 hours per week.

What the appellant set out to establish, and the onus was on him to do so, was that he had been deprived of the benefit of a fixed term variation to his contract, whereby he was to work and be paid over a period of two months minimum at South Kensington Primary School part-time along with his existing work at South Perth Primary School.

The Commission at first instance found, preferring the evidence of the respondent's witnesses to that of the appellant, that the period of work covered by the variation was not terminated by the employer. It was open so to find. As a result, there were no benefits established by the appellant as his entitlement.

More particularly, the Commission made a number of findings of fact based on the credibility of witnesses. The probabilities of the case were not against these findings. The findings depended to a substantial degree on the credibility of witnesses.

There was nothing apparent on the record or submitted to us from the appellant, as the summary of my comments and evidence above bears out, to show that the Commission failed to use or had palpably misused his advantage. There was nothing to show that the Commission had acted on evidence which was inconsistent with facts incontrovertibly established by the evidence or which was glaringly improbable.

Further, it was not for the respondent to call Mr Hastie to prove the appellant's case. It was for the appellant to do so. He did not.

Some reference was made to comments made at a conciliation conference. Generally speaking, so that conciliation conferences are rendered effective and remain effective, what is said at them should be treated by this Commission as if it is said without prejudice and is also confidential. S.6(b) of the Act would support such a view, as well as longstanding practice.

For those reasons, I would dismiss the appeal.

SENIOR COMMISSIONER G L FIELDING: The single issue in this appeal is, as the Appellant acknowledged, whether the Commissioner erred in concluding that the Appellant had not established that he was prevented by the Respondent from working in accordance with his contract of employment and therefore denied by the Respondent the benefits he claimed under that contract. The Appellant contends that he was denied the opportunity to receive the benefits under his contract because his employment was terminated wrongly by the Respondent. He says that he was the only person to testify before the Commission that his employment had in fact been terminated by the Respondent and that the witnesses called on behalf of the Respondent had no real knowledge of what had occurred in this respect. In short, he says that the Respondent failed to call reliable evidence to challenge his testimony.

The onus at all times was on the Appellant to show that he was denied the contractual benefits he claims and not as the

Appellant seems to think, on the Respondent to show that he was not denied those benefits. In my assessment there was ample evidence on which the Commission could conclude, as it did, that the Appellant had not discharged the onus to establish that he had been denied a benefit due to him by the Respondent as his employer. The Appellant, contrary to the submissions he made during the course of the appeal, testified that he was advised of the termination of his employment by the Deputy Principal of the school where he was employed as a gardener. The Deputy Principal was not called to give evidence. Instead the Principal was called. He testified that so far as he was concerned the Appellant was not dismissed from his employment although in fairness, the Principal testified that he was not involved in the discussions with the Appellant which led to the ending of his employment. It appears from the Principal's evidence that it was the school's Registrar with whom the relevant discussions occurred. The Registrar also was not called as a witness. However, one of the Respondent's industrial officers Ms Rogers, who had direct dealings with the Appellant regarding the matter was called. She investigated the Appellant's complaint that his employment had been wrongly terminated and that he had been denied the benefits which ultimately became the subject of the Applicant's claim before the Commission. She testified that there was no record of his employment having ever been terminated. On the contrary, the records disclosed that his employment was still on foot albeit that he was restricted to working a prescribed number of hours each day which did not permit him to work at overtime rates of pay. Furthermore, she testified that she explained their position to the Appellant at length but he did not accept what she was saying.

Where as here there is conflicting evidence or at least evidence which casts doubt on the testimony of one or other of the witnesses, it is the task of the Commissioner hearing the matter to make the assessment as to which evidence is the most credible. It is trite to say that it is not for the Full Bench on appeal to embark upon that task. It is clear from the Commission's published reasons for decision that the Commissioner accepted Ms Rogers' evidence. In particular, he accepted that she tried to persuade him that his employment had not been terminated but remained on foot. In those circumstances it is not the least surprising that the Commissioner was not satisfied even on balance, that the Appellant had been prevented by the Respondent from carrying out his contract of employment.

During the course of the appeal the Appellant sought to rely on statements made by representatives of the Respondent during the course of the conciliation conference which preceded arbitration of the Appellant's claim. The Full Bench is required by section 49(4) of the Industrial Relations Act 1979 to consider the appeal on the basis of the material before the Commission at first instance. What transpired in the conciliation conference was not before the Commission at first instance and nor should it have been. The conciliation and arbitration processes conducted by the Commission are quite separate and distinct. (see: In re Heffernan; Ex parte Leo Burnett Pty Ltd & Ors (1979) 53 ALJR 63 and see too: Robe River Iron Associates v. Amalgamated Metal Workers & Shipwrights Union of Western Australia & Ors (1986) 66 WAIG 1405, 1410). The Act requires, as a general rule, that conciliation be conducted in private and the arbitral process in public (see: sections 44(5) and 27(1a)). In addition, the Act regulates the extent to which in most cases, the member of the Commission who presided over the conciliation proceedings should be involved in arbitration (see: section 44(10)).

Furthermore, it has long been accepted that what is said in the process of conciliation is not to be taken as evidence for the purpose of arbitration and there is good reason for that practice. To some extent this practice is supported by the fact that conciliation proceedings are required to be held in private. Moreover, the Act requires the Commission so far as is possible to endeavour to settle all matters before it by way of conciliation (see: section 32(1)). It is patently obvious that the prospect of resolution by conciliation will be severely inhibited if those involved in the conciliation process are unable to speak "frankly without fear of being subsequently disadvantaged by reason of genuine efforts to settle a dispute" (see: Australian Building Construction Employees' and Builders Labourers' Federation & Ors v. Viner & Ors (1982) 63 FLR 253, 271).

For the foregoing reasons I agree that the appeal should be dismissed.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the Reasons for Decision of His Honour the President and Senior Commissioner Fielding in draft form. I agree with their conclusion that the appeal should be dismissed and having nothing to add.

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

Order accordingly.

Appearances: Mr W Thornander on his own behalf as appellant.

Ms M Newton (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Warrick Thornander
(Appellant)
and
Minister for Education.
(Respondent)
No. 1838 of 1996.

BEFORE THE FULL BENCH.
HIS HONOUR THE PRESIDENT P J SHARKEY.
SENIOR COMMISSIONER G L FIELDING.
COMMISSIONER R N GEORGE.

18 February 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 10th day of February 1997, and having heard Mr W Thornander on his own behalf as appellant and Ms M Newton (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 18th day of February 1997 wherein it was found that the appeal should be dismissed, it is this day, the 18th day of February 1997, ordered that appeal No 1838 of 1996 be and is hereby dismissed.

By the Full Bench.

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

FULL BENCH—
Appeals against decision of Industrial Magistrate—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Edith Fisher
(Appellant)
and
The Totalisator Agency Board.
(Respondent)
No. 1297 of 1996.

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

30 January 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Industrial Magistrate's Court at Perth, whereby it dismissed complaints made by the appellant against the respondent.

By these complaints, the appellant alleged that the defendant—

(1) Failed to keep a time and wages record in breach of clause 46 of the Government Officers Salaries, Allowances and Conditions Award 1989, No PSA A 3 of 1989 (hereinafter referred to as "the award").

(2) Failed to allocate a salary range in breach of clause 10 of the award.

(3) Failed to pay annual leave, pro rata leave and annual leave loading in breach of clause 19 of the award.

(4) Failed to pay accumulated long service leave in breach of clause 21 of the award.

(5) Failed to pay overtime in breach of clause 18.

The appellant now appeals against those dismissals on the following grounds—

"The appellant appeals against the whole of the decision of the Industrial Magistrate dated 4 September 1996 on the following grounds:

1 The Learned Industrial Magistrate erred in concluding that the appellant was not a "government officer" for the purposes of the Government Officers, Salaries, Allowances and Conditions Award 1989 (PSA A3 of 1989) **("the Award")** in that he:

(a) took into account an irrelevant consideration that being the terms of the agreement between the appellant and the respondent dated 12 June 1970 when the agreement was not material to whether the appellant was a salaried staff member of the respondent;

(b) took into account an irrelevant consideration that being the complainant's absence for a small portion of her working time from the Beverley TAB agency at which she was employed;

(c) applied and relied upon the decision in In **Re Shine; Ex Parte Shine** (1892) 1 QB 529 per Fry LJ in circumstances where the Court in that case recognised that the definition of "salary" is not closed, exclusive or complete;

(d) failed to have regard to the wider definition and meaning of "salary" as enunciated by other Courts and Tribunals and thereby failed to conclude, on this wider test, that the appellant was paid a "salary".

(e) erred in concluding that the ticket fee and commission on turnover paid to the appellant by the respondent derogated from the proposition that the opening fee or base fee and the payment as a whole was a salary when such conclusion is inconsistent with the weight of authority.

2 The Learned Industrial Magistrate erred in failing to conclude that it was open by inference on the whole of the evidence that the appellant, but for the conduct of the respondent, would be classified as on the salaried staff of the respondent when:

(a) the evidence established that the duties performed by the appellant at the Beverley agency were consistent with the duties performed by other agency managers employed by the respondent; and

(b) other agency managers employed by the respondent were employed on the salaried staff of the respondent;

3 The Learned Industrial Magistrate erred in upholding the no case to answer submission when there was evidence (even if tenuous or inherently weak or vague) which could have been taken into account by the Court in its deliberations and that evidence was capable of supporting a conclusion that the respondent had a case to answer.

ORDERS SOUGHT

4 The Appellant seeks an order:

(a) that the appeal be and is hereby upheld; and

(b) that the matter be remitted to the Industrial Magistrate's Court for further hearing and determination according to law."

BACKGROUND

At first instance, the complainant (the appellant upon this appeal) had completed her case when there was a submission of no case to answer which was upheld by the learned Industrial Magistrate.

It is, however, necessary to say something about the background of the complaints. At all material times, Mrs Edith Fisher, the appellant herein, was the Authorised Agent of the respondent. The respondent, the Totalisator Agency Board (hereinafter referred to as "TAB"), is a body which is constituted under the Totalisator Agency Board Betting Act 1960 (as amended). The appellant, Mrs Fisher, at all material times, conducted a totalisator agency in Vincent Street, Beverley, in the State of Western Australia.

She became such an agent by virtue of an agreement executed by her and by the respondent dated 12 June 1970 (see pages 88-92 of the appeal book (hereinafter referred to as "AB")).

By such agreement, the appellant as Authorised Agent was granted a licence to use and occupy the premises at Vincent Street, Beverley, in order to conduct the agency on the premises (see clause 1, page 88 (AB)).

By clause 2, a number of obligations were cast upon the appellant, related to the conduct of the premises. These include employing "such number of persons as shall be necessary for the proper and efficient conduct of the said agency and furnish to the Board such particulars regarding the persons so employed as the Board may from time to time require" (see page 88 (AB)).

The agent is required to keep the premises open for business on such days and during such hours as are from time to time required or approved by the Board (see page 89 (AB), clause 2(h)).

However, clause 5 reads (see page 90 (AB))—

"The Authorised Agent shall not be required and need not be in personal attendance at the said premises during the times the same shall be open for business."

The evidence was that Mrs Fisher was in attendance for most of the time during opening hours, in fact, 85-90 per cent, and the learned Industrial Magistrate correctly so found.

Clause 7 provides (see page 91 (AB))—

"The Board shall pay to the Authorised Agent during the term hereof a commission set forth in the second Schedule hereto."

The terms of the Second Schedule are as follows (see page 91 (AB))—

"(a) Opening fee of $2.25 per hour to be paid on a weekly basis according to the hours that the agency is open to the public as authorised by the Board; plus

(b) An amount of one cent (1c) per bet on the net investments; plus

(c) Commission on weekly turnover—

Up to $6,000	:	2 1/4%
From $6,001 to $10,000	:	1 1/2%
Over $10,000	:	1%"

The learned Industrial Magistrate decided that Mrs Fisher was an employee of the TAB by virtue of the provisions of s.34(4) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") and on the basis of the decision of Parks C in Fisher v TAB 73 WAIG 3469 where Parks C decided that the appellant herein was an employee of the respondent (see pages 132-134 of the transcript at first instance). That finding of His Worship was not challenged before the Full Bench upon this appeal.

The learned Industrial Magistrate correctly observed that a finding that there is a case to answer is not a decision on the whole case against the party making the submissions. He also correctly observed that the basis of such a submission where the making of such a submission is governed by the practice in criminal matters is that there is no evidence upon which a court might convict (see May v O'Sullivan [1955] 92 CLR 654 (HC)). That is the case here, even though one does not

proceed to conviction upon a complaint such as this before the Industrial Magistrate (see also Zanetti v Hill [1962] 108 CLR 433 (HC) per Kitto J at page 442).

In determining whether there is a case to answer, the prosecutor's case is taken at its highest (see Doney v R [1990] 171 CLR 207 (HC)).

At the close of the prosecution case, if the Industrial Magistrate thought that the inferences of fact could be properly drawn equally consistent with guilt or innocence, then he should have ruled that there was no case to answer (see Torrance v Cornish (1985) 79 FLR 87 at 89).

Those were statements of some of the law applicable in the proceedings before His Worship.

The standard of proof at first instance was, of course, on the balance of probabilities.

However, the question which confronted His Worship is what confronts the Full Bench in this case. It is whether the award applied to the appellant's employment.

Clause 4 of the award is the scope clause of the award. That provides as follows—

"4.—SCOPE

> This Award shall apply to all Government officers eligible for membership of the Civil Service Association of Western Australia Incorporated, employed by the Public Authorities listed in Schedule A, except for those officers specified in Schedule B, or officers whose salaries or salary ranges, conditions or allowances are determined or recommended pursuant to the Salaries and Allowances Act 1975 or any other Act or are determined or to be determined by the Governor pursuant to the provisions of any Act of Parliament."

The respondent is a public authority listed in Schedule A to the award. There was no suggestion before His Worship or before the Full Bench that Mrs Fisher fell within any of the exceptions contained in clause 4 of the award.

His Worship observed that he had to determine whether there was evidence upon which it might be found that Mrs Fisher was a government officer. A "government officer" is not defined in the award.

"Officer" is, however, defined in clause 6 of the award to mean—

> " "officer" means a Government officer within the meaning of the Industrial Relations Act 1979."

The only relevant definition of "government officer" is to be found in s.80C(1) of the Act. This definition is definition (b) and it reads—

> "every other person employed on the salaried staff of a public authority".

The question, therefore, was whether the appellant was paid a salary, and, therefore, employed on the salaried staff of a public authority.

It is necessary to consider what is meant by a "salary" before examining the facts which support His Worship's findings. His Worship adverted to a number of authorities. In Nette v Howarth [1935] 53 CLR 55 (HC) Rich J said at page 60, quoting Bowen LJ in In Re Shine; Ex parte Shine [1892] 1 QB 522—

> " "Salary", I think, must mean a definite payment for personal services arising under some contract, and (to borrow and expression of my brother Fry) computed by time" (In Re Shine; Ex parte Shine ((1892) 1 QB at 522 at 529)."

His Worship also considered the dictum of Fry LJ in In Re Shine; Ex parte Shine (op cit) where he said—

> "Whenever a sum of money has these four characteristics—first, that it is paid for services rendered; secondly, that it is paid under some contract or appointment; thirdly, that it is computed by time; and fourthly, that it is payable at a fixed time—I am inclined to think that it is a salary, and not the less so because it is liable to determination of the will of the payer, or that it is liable to deductions. I do not mean to say that it is a complete definition of a "salary", or that it includes every kind of salary; but I think that, whenever these four circumstances concur, the payment is a salary."

The Shorter Oxford English Dictionary (Third Edition) defines "salary" as a "fixed payment made periodically to a person as compensation for regular work; now usu. for non-manual or non-mechanical work (as opp. to wages)". The Macquarie Dictionary defines "salary " as "a fixed periodical payment, usu. monthly, paid to a person for regular work or services, esp. work other than that of a manual, mechanical, or menial kind".

There are some authorities which refer to various taxation Acts. The High Court in Commissioner of Taxation v Barrett and Others [1973] 129 CLR 395 (HC) held that salesmen retained by a firm of land agents who were paid commission on sales were employees of the land agents and were therefore in receipt of "wages". Wages were defined under s.40 of the Payroll Tax Assessment Act 1941-1969 (Cth) to mean "any wages, salary, commission, bonuses or allowances paid or payable ... to any employee as such". There was nothing said in that case to distinguish salaries from wages because the definition of "wages" in the Act included the word "salary" (see also Federal Commissioner of Taxation v J Walter Thompson (Aust) Pty Ltd [1944] 69 CLR 227 (HC) and Mutual Acceptance Co Ltd v Federal Commissioner of Taxation [1944] 69 CLR 389 (HC)).

In World Book (Aust) Pty Ltd v Federal Commissioner of Taxation 108 ALR 510 no assistance can be derived from the definition of "salary or wages" in s.221C(1A) of the Income Tax Assessment Act 1936 (Cth). That is because "salary or wages" as defined then in that Act mean salary, wages, commission, bonuses or allowances paid to an employee. In other words, there is nothing which might distinguish "salary" from "wages" or from "commission or bonuses" for the purposes of these proceedings in those authorities.

In Greater London Council v Minister of Social Security [1971] 2 All ER 285 a salary was held to be a fixed payment made periodically as compensation for regular work. The court referred to the judgment of Fry LJ in In Re Shine; Ex parte Shine (op cit), and said at page 288—

> "The requirement that the payment should be computed by time means, I think, that the payment should be on a time and not a piece-work basis."

In Re Earle's Shipbuilding and Engineering Co, Barclay and Co v Earle's Shipbuilding and Engineering Co (1901) WN 78 workmen were paid for their services partly by fixed salary and partly by commission. These employees were held to be in receipt of wages.

In Re Klein; ex parte Goodwin (1906) 22 TLR 664 Bigham J held that while a commercial traveller was employed at a salary of two pounds per week and commission of three and three quarter per cent, the commission was part of his salary. He had given his services to his master and that is the rate at which he was paid. This was an authority distinguished by His Worship.

The question was what is a salary and what was the appellant paid? Was it a salary?

Allowances may form part of a salary (see Metropolitan Water Sewerage and Drainage Board v Histon and Others [1982] 2 NSWLR 720).

The question does not arise here as to whether the remuneration paid constituted a salary because it is paid to a skilled worker. It seemed to have been accepted by the parties that if it could be characterised according to the criteria set out in In Re Shine; Ex parte Shine (op cit) as a salary, then it was a salary.

The learned Industrial Magistrate found that the appellant was paid at the end of each week by just one payment "equivalent to the whole of the base fee, the ticket fee and the commission on turnover". There was no separate payment in respect of each of the three components constituting the commission as a whole. The amounts paid differed.

The learned Industrial Magistrate applied the indicia referred to in In Re Shine; Ex parte Shine (op cit) to determine whether the appellant was paid a salary.

The following questions were posed—

(1) Were the monies paid for services rendered? The appellant's counsel submitted at first instance that they were.

(2) Were the monies paid under a contract or appointment? The monies were paid under a contract of employment, it was submitted. They clearly were.

(3) Were the payments computed by time? It was submitted that a proportion of the payment was computed by time (the opening or base fee).

(4) Were the payments made at a fixed time? The answer to that has to be, on the evidence, yes.

The true nature of the payment to the complainant was required to be considered by the court, having regard to each and all of its component parts as a whole, His Worship held. In particular, he held, it was not open to conclude that the payment was a salary based on a narrow consideration that only took into account the fact that the complainant was paid an opening fee that was calculated by reference to time, and payable at fixed times. The ticket fee and the commission on turnover derogated from the proposition that the opening fee or base fee and the payment as a whole was a salary.

The learned Industrial Magistrate also found that the payment as a whole was not computed by time, because the payment varied from week to week, depending on the amount for the ticket fee and the commission on turnover for that particular week. Although the payments were made on a weekly basis, and so, at a fixed time, that is quite different from their being computed by time, His Worship held.

The learned Industrial Magistrate found that the appellant was not paid for services rendered because of the provision that she was not required to be in personal attendance at the agency during the times when it was open for business, and, indeed, was there 85-90 per cent of the time.

The learned Industrial Magistrate held that the concepts of commission and bonus have a different meaning in general usage, and that meaning is not encompassed in the ordinary meaning of the terms "wages" and "salary".

The learned Industrial Magistrate referred to the obligations upon the appellant to effect insurance. This would necessarily have to be met from commission in the absence of any other income, he held.

There was no direct evidence, His Worship held, that the complainant was, at all material times, a member of the "salaried staff" of the defendant. Indeed, His Worship held that the direct evidence was to the contrary.

As well as the authorities referred to above, it is necessary to consider the meaning of "salary" as it is considered in other authorities. Authorities which deal with the meaning of "wages" are, in some cases, of assistance.

In Commissioner for Government Transport v Kesby [1972] 127 CLR 374 (HC) Gibbs J said that the word "salary" there used in s.124(1) of the Transport Act 1930 (NSW) also included the word "wages", but, more significantly, observed that the word "salary" does connote an element of periodicity and regularity. Barwick CJ observed—

> "If the wage is set as a periodic rate, that is to say, a stated sum payable by the week or fortnight to officers in the classification, the section will operate, in my opinion, exactly as it would if a rate of salary were stipulated for the classification."

Gibbs J said at page 388—

> "The "salary" therefore in my opinion means the full amount of wages payable, for the time being, to officers generally of the relevant classification and length of service for the work which such officers are regularly required to perform in the ordinary course of their employment."

Compensation payments were held to be payments, not to be remuneration for services.

Barwick CJ referred to the sense of regularity and uniformity which is implied in the concept of a salary payable to an officer.

In Federal Commissioner of Taxation v Steeves Agnew and Co (Vic) Pty Ltd [1951] 82 CLR 408 (HC) advances on account of salary were held not to be wages or salary.

In Re McLennan and Commissioner for Superannuation (1990) 12 AAR 586 (AAT) the Administrative Appeals Tribunal held that compensation payments could not be characterised as salary or wages for the purposes of calculating a pension under the Superannuation Act 1976 (Cth), and carefully canvassed the authorities.

The terms "salary" and "wages" have long been used in legislation such as the Pay-roll Tax Assessment Act 1941-1969 (Cth) and the Income Tax Assessment Act 1936 (Cth), as I have observed above.

There has, historically, been a distinction drawn between the two terms "wages" and "salary" in that the term "salary" was ordinarily used to denote the remuneration paid—

> "Where the engagement is for a period, is permanent or substantially permanent in character, and is for other than manual or relatively unskilled labour, the remuneration is generally called a salary."

(See Federal Commissioner of Taxation v J Walter Thompson (Aust) Pty Ltd (HC) (op cit) at page 233).

The term "wages" was also used to denote remuneration, but only remuneration for labour (see per Groves J in Gordon v Jennings (1882) 51 LJQB 417 where His Lordship said)—

> "The term "wages" is not applied to the remuneration of a high or important officer of the state or a company, for instance, but to that of domestic servants, labourers or persons of similar description."

No precise line can be drawn between "wages" and "salary" (see per Latham CJ in Federal Commissioner of Taxation v J Walter Thompson (Aust) Pty Ltd (HC) (op cit)).

In any event, the difference is not relevant for the purposes of these reasons.

I have already referred to the "essential features" of a salary laid down in In Re Shine; Ex parte Shine (op cit) at page 529 per Bowen LJ and at page 531 per Fry LJ.

In Greater London Council v Minister of Social Security (op cit), where a dentist was paid monthly at a fixed rate for each session worked, each session was for three hours only, MacKenna J said this—

> "Where, as here, the unit of time is a short period of three hours actually worked, there must, I think, be added to Fry LJ's four characteristics, a fifth, that the contract should provide for the recurrence of the sessions of work throughout the contract period, whether that period is fixed or indefinite. ... If the contract provided only for a single session of three hours' work, the payment, though computed with reference to time, would not be described as 'salary'."

"Wages" have been held not to include payments which were not for labour (see London County Council v Henry Boot and Sons Ltd [1959] 1 WLR 1069; [1959] 3 All ER 636).

In Pereira v Hotel Jayapuri Bhd [1986] 1 WLR 449 monies paid by way of 10 per cent surcharge on the bills at the hotel and then distributed to employees were held not to be part of a wage, "wages" being defined in the Employees' Provident Fund Act 1951 (Malaysia) as meaning the remuneration in money due to an employee under his contract of service.

In Terry Shields Pty Ltd v Chief Commissioner of Pay-roll Tax (NSW) (1989) 17 NSWLR 493 at 501 Lee CJ at CL said this—

> "... I am of the view that the definition of "wages" in the Act is not intended to attribute to the words "wages, salary" used in the definition a meaning other than their ordinary meaning and that the meaning is one which contemplates an agreement between employer and employee that an agreed amount of money shall be paid as wages. The definition of "wages", as I have said, in using the words "paid or payable (... in cash or in kind)" in no way alters the meaning of the word "wages" as being the monetary amount agreed upon as the price or remuneration for the work done by the employee."

In that case, and in London County Council v Henry Boot and Sons Ltd (op cit), the courts looked at whether there was a contract of employment, whether the payments were made under that contract, and whether they were for work done by the employee.

The word "salary" is to be read in its ordinary sense as Lee CJ at CL said in Terry Shields Pty Ltd v Chief Commissioner of Pay-roll Tax (NSW) (op cit).

> "The question what is the "salary" in a particular case is purely one of fact. It does not simply depend on the terminology used to describe the amount payable. Thus in the present case it can hardly be doubted that the

> increments and the margins form part of the "salary" of bus drivers. Similarly a payment referred to as "a shift penalty" or as "overtime" could be said to constitute part of the "salary" of bus drivers if in fact it was an amount payable to bus drivers generally as remuneration for the services that bus drivers generally are regularly required to perform."

(See, too, per Bowen CJ, Woodward and Fitzgerald JJ in Commissioner of Superannuation v Carpenter (1983) 77 FLR 224, where they referred to the judgment of Gibbs J, with whom Menzies, Walsh and Mason JJ agreed, in Commissioner for Government Transport v Kesby (HC) (op cit)).

The courts in those cases did not specifically refer to the general characteristics of "salary" or "wages" referred to in In Re Shine; Ex parte Shine (op cit). In both cases cited above on this page, however, the court considered that there should be an element of remuneration. In Commissioner for Government Transport v Kesby (HC) (op cit) that remuneration was held to be remuneration in respect of services which are generally required to be performed by the employee. In Commissioner of Superannuation v Carpenter (op cit) it was said that the remuneration must be in respect of the employment of the employee. In Commissioner for Government Transport v Kesby (HC) (op cit) Barwick CJ also said that it was necessary for there to be "some sense of regularity and uniformity" about the payments.

In my opinion, the question whether an employee is in receipt of a salary (or wages) is best approached in the manner in which it was approached in Commissioner for Government Transport v Kesby (HC) (op cit) and Commissioner of Superannuation v Carpenter (op cit).

I would not apply the more detailed approach in In Re Shine; Ex parte Shine (op cit) per Fry LJ, an approach not adopted in the same case by Bowen LJ.

Firstly, this was a contract of employment, a finding made by His Worship and not challenged. Mrs Fisher was therefore an employee. The respondent Board was her employer. That means that the employee agrees in consideration of a wage or other remuneration that the employee will provide his/her own work and skill in the performance of some service for his/her employer.

There was evidence that the appellant attended at the TAB shop at Vincent Street, Beverley, 85-90 per cent of the time when it was open. Further, the services which she was required to provide are set out in the contract between her and the respondent. It is quite clear, upon a perusal of them, that she is and was required to conduct a totalisator agency at the premises in Vincent Street, Beverley. This connotes, without doubt, the provision of her services in so doing. This conclusion is reinforced by the requirement that the appellant (and no-one else) should, at all times, use her best endeavours to carry on the agency and conduct the same in a proper, orderly and efficient manner in accordance with the general policy laid down by the Board. It is the appellant who conducts the agency. This requires, no matter whom she employs, the provision of her personal services. That, ipso facto, requires the personal exertion of the appellant. It is the appellant who must do so properly and efficiently. In doing so, she must, amongst other duties, comply with the requirements contained in clause 1 of the agreement. She must, inter alia, employ sufficient persons to properly and efficiently conduct the agency. To ensure that that occurs requires supervision of those employees. There are a list of requirements which cannot be complied with without her execution, supervision and exertion.

There is no doubt that there was evidence that the appellant performed services under a contract of service and was required to as an employee (which she was found to be). That that was the case was in no way diluted by the evidence that the appellant was not in the agency all of the time, or that she was not required to be in personal attendance at the times the premises were open for business.

There is no doubt, on the evidence, that she was remunerated under a contract of employment for the provision of her services as agent conducting the TAB agency. The remuneration was termed commission. The commission includes an opening fee of $2.25 per hour to be paid on a weekly basis according to the hours that the agency is open to the public. That is a payment of regularity and periodicity. The "commission" also includes a commission or weekly turnover and an amount of one cent per bet on the nett investments.

There are cases where a weekly identifiable amount is paid as a "salary" and added to that is a commission. Employees who work as salespersons are obviously remunerated by commission, as employees secondary to the fixed regular periodical payments which are the foundation of their remuneration.

His Worship considered the payments by reference to their component parts. His Worship found that although these payments were made on a weekly basis and so at a fixed time they were not computed by time (see In Re Shine; Ex parte Shine (op cit)). However, there was a periodicity and regularity about the payments (see Commissioner for Government Transport v Kesby (HC) (op cit)).

His Worship correctly observed that a characteristic of a salary is that it is paid for services rendered, but he held that the monies were paid whether or not the complainant personally rendered any services. However, the essence of a contract of employment, which this was held to be, is the provision of her services by the appellant. The monies were paid under the contract of service to remunerate the appellant for her services in the conduct of the agency. Having found that this was a contract of employment, His Worship could not find that the amounts paid to her were not to remunerate her for the provision of those services.

As I have observed above, the appellant's contract involved the provision of services as an agent (as a matter of fact 85-90 per cent of opening hours at the agency), because of her obligations under the contract and because she was an employee. She was remunerated under the contract for the services which she was required to provide. She was paid for services rendered as agent in the conduct of the agency. She was paid as an employee under a contract of employment. Her contract was a longstanding contract consistent with the contract of a person paid a salary. Her services, if it were necessary to so find, were the services required of a salaried person. They were managerial services. She was paid periodic and regular payments, albeit computed in part as commission is computed.

In In Re Shine; Ex parte Shine (op cit), Fry LJ said specifically that the definition he adopted did not include every kind of salary, and Bowen LJ followed the sort of test applied in Commissioner for Government Transport v Kesby (HC) (op cit) and Commissioner of Superannuation v Carpenter (op cit).

In this case, I would pay little attention to the fact that part of the payment was not strictly computed by time. The fact of the matter is that this was a contract of employment where the employee was remunerated by payments for personal services which were regular and periodic, and, in part, computed by time. A contract of employment is, by definition, a contract for the provision of the employee's services.

The learned Industrial Magistrate held that Mrs Fisher was an employee and that finding has not been challenged.

The learned Industrial Magistrate should therefore have found that the appellant was, at all material times, on the "salaried staff of a public authority" and that she was paid a salary. He also should have found, putting the complainant's case at its highest, that she was a government officer, and that, on the evidence, the scope clause of the award applied to the respondent and the appellant. In so finding, I have considered all of the relevant material and submissions.

The no case submission should not therefore have been upheld and the complaints should not have been dismissed. I would observe, however, that the case (subject to any other submissions to His Worship which he might uphold) now requires further hearing and determination on whatever evidence is or has been adduced and on whatever submissions are made.

I would uphold the appeal. I would set aside the decisions made at first instance to dismiss the complaints and remit the same to the learned Industrial Magistrate to hear and determine in accordance with these reasons and according to law.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the reasons for decision of His Honour the President in draft form. In light of the undisputed finding of His Worship at first instance that the Appellant in these proceedings was an employee of the Respondent and putting the complainant's case at its highest, I agree with His Honour's

conclusion and the remedy proposed for the disposition of the Appeal.

COMMISSIONER C B PARKS: I agree with the reasons for decision of His Honour the President and the order proposed, and have nothing further to add.

THE PRESIDENT: For those reasons, the appeal is upheld, the decisions made at first instance set aside, and the complaints remitted to the Industrial Magistrate to hear and determine in accordance with these reasons and according to law.

Order accordingly.

Appearances: Mr B Di Girolami (of Counsel), by leave, on behalf of the appellant.

Mr A D Lucev (of Counsel), by leave, and with him Ms A E Colegate (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edith Fisher
(Appellant)
and
The Totalisator Agency Board.
(Respondent)
No. 1297 of 1996.

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

26 February 1997.

Supplementary Reasons for Decision.

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

This matter came before the Full Bench for a speaking to the minutes on 12 February 1997 at the request of the respondent.

The respondent sought amendments in the following terms—

"It is proposed that the second order of the Commission be deleted in its entirety and substituted by the following orders:

"(2) THAT the decision of the Industrial Magistrate in complaint nos 11, 142 and 143 of 1995 and 37 and 38 of 1996 made on the 5th day of September 1996 that there was no case to answer on the grounds because it could not be concluded on the evidence that the Appellant:

(a) was on the "salaried staff" of a Public Authority (namely the Respondent) and that she was paid a salary; and

(b) was a Government Officer

be and are hereby set aside.

(3) THAT the said complaints be and are hereby remitted to the Industrial Magistrate to further hear and determine the same:

(a) in accordance with the reasons for decision herein;

(b) having regard to the other submissions on which no decision has yet been made;

and

(c) according to law." "

Counsel for the respondent submitted that the order ought to make it clear that other submissions which were not ruled upon at first instance still require decision.

Counsel for the appellant submitted that paragraph (2) of the proposed amendments was unnecessary. He submitted that there was no power in the Full Bench to direct the Industrial Magistrate to hear and determine the complaints, having regard to submissions on which no decision had yet been made.

The case for the appellant upon appeal was that the learned Industrial Magistrate had erred in dismissing the appeal, the error being in finding that there was no case to answer. That was what the Full Bench had to decide. The Full Bench did so and gave reasons.

Matters not yet decided by the learned Industrial Magistrate are not matters which are or were before the Full Bench, and we are not persuaded that it is competent for the Full Bench to make any orders or give any directions related to matters before him. The hearing is one being conducted by His Worship in the exercise of his jurisdiction. The Full Bench's jurisdiction is confined within s.84 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") and does not run outside that to direct His Worship how to hear proceedings before him.

S.27 of the Act does not assist the respondent because that section relates to the powers of the Commission in relation to matters before the Commission.

The minutes of proposed order adequately reflects, in any event, the reasons for decision of the Full Bench.

Appearances: Mr B Di Girolami (of Counsel), by leave, on behalf of the appellant.

Mr A D Lucev (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edith Fisher
(Appellant)
and
The Totalisator Agency Board
(Respondent)
No. 1297 of 1996.

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

12 February 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 9th day of December 1996, and having heard Mr B Di Girolami (of Counsel), by leave, on behalf of the appellant and Mr A D Lucev (of Counsel), by leave, and with him Ms A E Colegate (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 30th day of January 1997 wherein it was found that the appeal should be upheld, and this matter having come on for a speaking to the minutes of proposed order on the 12th day of February 1997, and having heard Mr B Di Girolami (of Counsel), by leave, on behalf of the appellant and Mr A D Lucev (of Counsel), by leave, on behalf of the respondent, and the Full Bench having determined that supplementary reasons for decision will issue at a future date, it is this day, the 12th day of February 1997, ordered and directed as follows—

(1) THAT appeal No 1297 of 1996 be and is hereby upheld.

(2) THAT the decisions of the Industrial Magistrate in complaint Nos 11, 142 and 143 of 1995 and 37 and 38 of 1996 made on the 5th day of September 1996 be and are hereby set aside, and the said complaints be and are hereby remitted to the Industrial Magistrate to hear and determine the same in accordance with the reasons for decision herein and according to law.

By the Full Bench.

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

PRESIDENT—
Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Cross
(Applicant)
and
State School Teacher's Union of Western Australia (Inc).
(Respondent)
No. 1270 of 1995.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

12 December 1995.

Order.

THIS matter having come on for a directions hearing before me on the 12th day of December 1995, and having heard Mr I Cross on his own behalf as applicant and Mr R Castiglione (of Counsel), by leave, and with him Mr P Quinn on behalf of the respondent, 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 12th day of December 1995, ordered and directed as follows—

(1) THAT the application herein be and is hereby adjourned for further hearing and determination to 10.00 am on Tuesday, the 23rd day of January 1996 for half a day.

(2) THAT the respondent herein do provide to the applicant herein within seven days of the 12th day of December 1995 discovery and inspection of all correspondence relevant to the matters in issue in these proceedings, together with copies of all relevant minutes of meetings of the Administrative Committee, Appointments Committee, Executive Committee, Emergency Committee, and State Council of the respondent organisation, and an up-to-date copy of the Administrative Instructions of the respondent.

(3) THAT the respondent herein do file and serve any request for further and better particulars of the application herein within seven days of the 12th day of December 1995.

(4) THAT thereafter within a further seven days, the applicant do file and serve an answer to the request for particulars of such application.

(5) THAT within seven days thereafter the respondent organisation herein do file and serve its answer.

(6) THAT leave be and is hereby granted to Mr R Castiglione (of Counsel) to appear upon this hearing for directions only.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Cross
(Applicant)
and
State School Teachers' Union of Western Australia (Inc).
(Respondent)
No. 1270 of 1995.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

23 January 1996.

Order.

THIS matter having come on for hearing before me on the 23rd day of January 1996, and having heard Mr I Cross on his own behalf as applicant and Mr A Hodge (of Counsel), by leave, on behalf of the respondent organisation, and the applicant having sought leave to have the hearing and determination of the application herein adjourned, and I having determined for the just and expeditious hearing and determination of this matter that the hearing and determination of the application be adjourned, it is this day, the 23rd day of January 1996, ordered that the hearing and determination of application No 1270 of 1995 be and is hereby adjourned sine die.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Cross
(Applicant)
and
State School Teachers' Union of Western Australia (Inc).
(Respondent)
No. 1270 of 1995.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

25 March 1996.

Order.

THIS matter having been due to come on for hearing before me on the 25th and 26th days of March 1996, and the applicant having by letter dated the 20th day of March 1996 sought leave to have the hearing and determination of application No 1270 of 1995 adjourned, and the respondent having by letter dated the 15th day of March 1996 consented to such adjournment, and both letters having been filed herein, and I having determined for the just and expeditious hearing and determination of this matter that the hearing and determination of the application herein be adjourned, it is this day, the 25th day of March 1996, ordered that the hearing and determination of application No 1270 of 1995 be and is hereby adjourned sine die.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Cross
(Applicant)
and
State School Teachers' Union of Western Australia (Inc).
(Respondent)
No. 1270 of 1995.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

18 June 1996.

Order.

THIS matter having come on for hearing before me on the 17th day of June 1996, and having heard Mr I Cross on his own behalf as applicant and Mr A Hodge (of Counsel), by leave, on behalf of the respondent organisation, and the respondent having sought leave to have the hearing and determination of the application herein adjourned, and the applicant having consented to such adjournment being ordered, and I having determined for the just and expeditious hearing and determination of this matter that the hearing and determination of the application be adjourned, it is this day, the 18th day of June 1996, ordered that the hearing and determination of application No 1270 of 1995 be and is hereby adjourned sine die.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and
The Coal Miners Industrial Union of Workers of Western Australia Collie.
(Respondent)

No. 1476 of 1996.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

28 February 1997.

Order.

THIS matter having come on for hearing before me on the 28th day of February 1997, and having heard Ms J H Smith (of Counsel) by leave, on behalf of the applicant and Ms D MacTiernan, as agent, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 28th day of February 1997, ordered and declared, by consent, as follows—

(1) THAT the respondent organisation be and is hereby granted an extension of time to make application to the Registrar of the Commission, to alter rules 41 and 48 so that those rules are not contrary to or inconsistent with s.64A, s.64B and s.64D of the Act.

(2) THAT such application be filed by the 5th day of May 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant
and
The Disabled Workers Union of Western Australia
Respondent.

No 172 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

6 March 1997.

Order.

This matter having come on for a directions hearing before me on the 5th day of March 1997, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr G Hocking (of Counsel), by leave, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 6th day of March 1997, ordered and declared, by consent, as follows—

(1) THAT rules 7.1.(c), 7.2.(b), 7.2.(d) and 7.3.(b) of the rules of the abovenamed respondent organisation are contrary to or inconsistent with s.64A of the Act.

(2) THAT rule 9.1.(b) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.

(3) THAT rules 7.1.(c), 7.2.(b), 7.2.(d), 7.3.(b) and 9.1.(b) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 5th day of March 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
Applicant
and
The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
Respondents.

No 987 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

25 September 1996.

Order.

This matter having come on for hearing before me on the 24th and 25th days of September 1996, and the President having heard Mr L Young, as agent, on behalf of the applicant and Mr J 0 Kennedy (of Counsel), by leave, on behalf of the respondents, and Mr D K Hathaway seeking leave to intervene on his own behalf, and having heard the applicant and respondents upon an application to adjourn this matter, and I being satisfied that the hearing and determination of this matter should be adjourned, it is this day, the 25th day of September 1996, ordered and directed as follows—

(1) THAT the hearing and determination of application No 987 of 1996 be and is hereby adjourned sine die.

(2) THAT the matter be listed for further hearing and determination upon written application to the Commission by either the applicant or respondents, provided 48 hours notice in writing is given to the other parties, and, as a matter of courtesy, to Mr David Kimberley Hathaway.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
Applicant.
and
The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
Respondents.

No 987 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

14 August 1996.

Order.

This matter having come on for hearing before me on the 13th day of August 1996, and having heard Mr L Young, as agent, on behalf of the applicant and Mr J O Kennedy (of Counsel), by leave, on behalf of the respondents, it is this day, the 14th day of August 1996, ordered and directed as follows—

(1) THAT leave be and is hereby granted to the applicant to amend the application herein in the terms of the Amended Notice of Application and amended Schedules 2 and 3 filed herein on the 8th day of August 1996.

(2) THAT the hearing and determination of the application herein listed for 10.00 am on Wednesday, the 28th day of August 1996 be and is hereby vacated by consent.

(3) THAT the hearing and determination of the application herein be and is hereby adjourned by consent to 10.00 am on Tuesday, the 24th day of September 1996 and Wednesday, the 25th day of September 1996.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
Applicant

and

The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
Respondents.

No 987 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

31 July 1996.

Order.

This matter having come on for hearing before me on the 3lst day of July 1996 for an application for interim orders and a directions hearing, and having heard Mr L Young, as agent, on behalf of the applicant and Mr J O Kennedy (of Counsel), by leave, on behalf of the respondents, and having determined that my reasons for decision will issue at a future date, it is this day, the 31st day of July 1996, ordered and directed as follows—

(1) THAT the applicant by the applicant herein for interim orders be and is hereby dismissed.

(2) THAT leave be and is hereby granted to Mr J O Kennedy (of Counsel) to appear on behalf of the respondents herein for the interim orders and directions hearing only.

(3) THAT application No 987 of 1996 be and is hereby adjourned for hearing and determination to hear the evidence of witnesses to 9.00 am on Wednesday, the 7th day of August 1996 and for further hearing and determination to 10.00 am on Tuesday, the 13th day of August 1996 and Wednesday, the 28th day of August 1996.

(4) THAT the respondent organisation herein provide within 10 days of the 31st day of July 1996 to Mr L Young, agent for the applicant, at 7a Gipps Court, Hillarys WA 6025, discovery and inspection and a copy of the following documents—

  (a) A copy of the Minutes of the meeting of the 1991 Triennial Delegates Conference held in August 1991.

  (b) A copy of the General President's address to that same Triennial Delegates Conference.

  (c) A copy of the General Secretary's address to that same Triennial Delegates Conference.

  (d) A copy of the Minutes of all General Committee and Executive Committee meetings held whilst the applicant herein has been under suspension.

  (e) A copy of the Minutes of the meeting of the 1985 Triennial Delegates Conference held in August 1985.

  (f) The Minutes of the Special Delegates Conference held on the 10th and 11th days of April 1996.

(5) THAT the applicant herein provide within 10 days of the 31st day of July 1996 to Minter Ellison Northmore Hale, the solicitors for the respondents, copies of all meetings of the General Committee of the Locomotive Metropolitan Sub-Division of the Public Transport Union, from the date of the applicant's election to President of that Sub-Division to the present date.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
Applicant

and

The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
Respondents.

No 987 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

2 August 1996.

Reasons for Decision.

THE PRESIDENT: The applicant in these proceedings seeks, by application under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), for an interim order, to be immediately reinstated to his elected position of Perth delegate, and therefore a member of the General Committee of the respondent organisation, until I have heard and determined his application proper.

The application, which names the respondent organisation and other persons as respondents, alleges that a decision taken by members of the General Committee of the respondent organisation at their regular meeting held at 33 Brewer Street, Perth on Monday, 1 April 1996 at 5.15 pm, at which it was resolved that the Perth delegate, namely the applicant, Mr Edgar Schmid, be suspended under rule 22(u) from attending any further General Committee meetings for the remainder of the 1995/1996 term, be declared null and void.

There were complaints that the resolution to suspend was decided without due consideration to the provisions of rule 22(u), and was therefore made ultra vires the rules, and, further, that Mr Schmid was denied natural justice. Other allegations are made about the rules and other relief is sought.

In their answer and counter-proposal the respondents deny that there was any breach of natural justice and deny other allegations contained in the application. Before me they asserted that no interim order ought to be made reinstating Mr Schmid.

Mr Schmid's application was only filed on 16 July 1996, some four months or more after Mr Schmid was suspended.

It does not seem to have been in issue that I had jurisdiction in the matter, although it was not expressly asserted to me that Mr Schmid had been or was currently a member of the respondent organisation. The respondent organisation is clearly an organisation as that is defined in s.7 of the Act.

The application for an interim order reinstating the applicant, pending the hearing and determination of this matter, was based on a submission that the suspension of the applicant, since it was for the remainder of his term of office, which ends in approximately September/October 1996, amounted to a dismissal. Mr Young, on behalf of the applicant, cited in support of that proposition O'Donoghue v Amalgamated Society of Carpenters and Joiners of Australia; O'Donoghue v Griffin and Others 41 FLR 197 (FC).

He also submitted that the General Committee, by virtue of rule 13, had to consist of, inter alia, representatives from each of the ten districts mentioned in rule 6, who shall be elected for a period of two years.

It was alleged in general terms from the bar table that there had been a denial of natural justice.

It was also submitted by Mr Young, correctly, that the members of the Perth district, whose delegate Mr Schmid was, had been deprived of representation by him. However, if the suspension were validly made then Mr Schmid was not entitled to attend the Committee.

It was submitted by Mr Kennedy, on behalf of the respondents, that Mr Schmid was active in furthering the interests of the Public Transport Union, Locomotive Division of Western

Australia, of which he is the Metropolitan Sub-Division President. It was alleged therefore from the bar table that this application was one being used to further the political agenda of the Public Transport Union, Locomotive Division of Western Australia, or, indeed, the Public Transport Union itself. That was asserted from the bar table.

It was also submitted that there was an inordinate delay in bringing this application, and for that reason it ought to be dismissed. Mr Young submitted that such delay was unavoidable because Mr Schmid, who is a lay person employed had had to use time outside working hours to prepare a case in which he was engaged in the Industrial Appeal Court involving the respondent organisation. This, as I understood the submission, had devoured Mr Schmid's time and prevented him from making this application sooner than he had.

In Brown v SSTUWA and Others 69 WAIG 1390 and 1393 I said—

> "It seems to me that the principles which apply to the granting of interim injunction proceedings are most applicable here, with such modifications as this jurisdiction requires.
>
> The applicant must therefore establish—
>
> (a) That as a matter of discretion, it is just and correct for me to make the order in all of the circumstances.
>
> (b) That, in fact, there is a substantial matter to be tried.
>
> (c) That the plaintiff has a prima facie case for relief if the evidence on which the order is made is accepted at trial.
>
> In addition, the Commission must consider—
>
> (a) The damage which may be done to the respondent by granting the order as against the damage to the applicant if it is not granted.
>
> (b) Any irreversible consequences of the granting of the order.
>
> (c) The promptness or otherwise of the application.
>
> (d) Any other relevant consideration."

In this case, there was not sufficient evidence before me to establish that there was a substantial matter to be tried, or on which I might find that it was just and correct for me to make the order in all of the circumstances, or that the plaintiff had a prima facie case for relief. I was not therefore satisfied, on that basis, that I should make an order.

Further, I am not satisfied that the application was made as promptly as it should have been. The elapse of four months whilst the applicant remained suspended from the General Committee could not be explained by the fact that he was engaged in other litigation, particularly when he would have been able, one would have thought, to have engaged early the services of an agent such as Mr Young.

For those reasons, since the onus is on the applicant to establish that I ought to make an interim order, I find that that onus has not been discharged, and I am not satisfied that I should, as a matter of equity, good conscience and the substantial merits of the case, make the interim order sought. I will therefore dismiss the application for interim orders.

Appearances: Mr L Young, as agent, on behalf of the applicant.

Mr J O Kennedy (of Counsel), by leave, on behalf of the respondents.

AWARDS/AGREEMENTS—Application for—

AIR DRILL ENTERPRISE AGREEMENT 1997

No. AG 22 of 1997.

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 22 of 1997.

Air Drill Enterprise Agreement 1997.

SENIOR COMMISSIONER G.L. FIELDING.

18 February 1997.

Order.

HAVING heard Mr G.C. Sturman on behalf of the Applicant and Mr R.E. King, Managing Director 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 28th day of January, 1997 entitled Air Drill Enterprise Agreement 1997 be registered as an industrial agreement and shall replace the Air Drill Enterprise Agreement 1996.

(Sgd.) G. L. FIELDING,
[L.S.] Senior Commissioner.

———

Schedule.

1.—TITLE

This Agreement shall be known as the Air Drill Enterprise Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
4. 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
14. Workplace Agreements
15. Trade Union Training.
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 employees of Air Drill to whom the Award Metal Trades (General) Award No. 13 of 1965 applies. Approximately 20 employees are covered by this Agreement.

4.—PARTIES BOUND

(1) Air Drill,
27 Jackson Street,
Bayswater. W.A. 6053.

(2) The Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (AMWU),
1111 Hay 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 lst January 1997 and remain in force until 31st December 1997. 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 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, thereby 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) By mutual agreement with the apprentice concerned, training may occur outside of ordinary hours on one occasion.

(4) It is agreed that rates payable to apprentices shall not be reduced during the term of this Agreement.

10.—DISPUTE SETTLEMENT PROCEDURE

In the event of a question, difficulty or dispute, the matter shall be dealt with in accordance with the provisions of Clause 34.—Avoidance of Industrial Disputes contained in the Metal Trades (General) Award 1966 No. 13 of 1965.

11.—WAGES

The following rates shall apply—

(1)	Classification	Rate per Hour	Weekly Rate
	C 10	$15.55	$590.90
	C 12	$13.57	$515.66
	C 13	$12.84	$487.92

(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

Claims for further wage increases shall not be made during 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 in accordance with the terms and conditions of the Company Insurance Policy No. 05PD.002689.

14.—WORKPLACE AGREEMENTS

It is agreed that for the life of this Agreement workplace agreements or individual contracts of any kind shall not be offered to new or existing employees.

15.—TRADE UNION TRAINING

(1) Union shop stewards shall be allowed up to three days of paid leave per annum to attend trade union training courses conducted or approved by Trade Union Training Australia Inc. or the Australian Manufacturing Workers, Union.

(2) In the event that further training time is required by shop stewards, the Company will consider such requests on a case-by-case basis.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of Air Drill	Ralph King (Signed) 16/1/97
For and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch	John Sharpe-Collett (Signed)
COMMON SEAL	14/1/97

BRAMBLES WESTERN AUSTRALIA—PLACER (GRANNY SMITH) OPERATION GOLD MINING AND PROCESSING AGREEMENT 1996 No. AG 330 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Brambles Australia Ltd.

No. AG 330 of 1996.

Brambles Western Australia—Placer (Granny Smith) Operation Gold Mining and Processing Agreement 1996

SENIOR COMMISSIONER G.L. FIELDING.

6 March 1997.

Order.

HAVING heard Mr M.D. Llewellyn on behalf of the Applicant and Mr M.J. McLeod 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 6th day of December, 1996 and subsequently amended on or about 25th February 1997 entitled

Brambles Western Australia—Placer (Granny Smith) Operation Gold Mining and Processing Agreement 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the 'Brambles Western Australia—Placer (Granny Smith) Operation Gold Mining and Processing Agreement 1996'.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Resolution of Disputes Procedure
7. Single Enterprise
8. Relationship with Award
9. No Reduction
10. Contract of Employment
11. Hours
12. Payment of Wages
13. Safety Footwear and Protective Clothing
14. Shift Allowance
15. Annual Leave
16. Superannuation
17. Parental Leave
18. Redundancy
19. Aim of Agreement
20. Introduction of Change
21. Personnel Selection and Career Path
22. Deduction of Union Subscriptions
23. Classification/Definitions
24. Accommodation
25. Declaration and Signatories

Schedule 1
Schedule 2

3.—AREA AND PARTIES BOUND

This is an Agreement between the Australian Workers Union (West Australian Branch) Industrial Union of Workers (hereinafter referred to as the 'Union'), its Officers, Brambles employees employed at the Placer (Granny Smith) Operation and Brambles Australia Limited, trading as Brambles Western Australia (hereinafter referred to as the 'Brambles').

4.—APPLICATION

This Agreement shall be binding upon Brambles and any person eligible to be a member of the Union employed by Brambles at the Placer (Granny Smith) Operation on work covered by the terms of AWU Gold (Mining and Processing) Award 1993, No A1 of 1992 (the 'Award').

The number of employees covered by this Agreement is approximately thirty.

5.—DURATION

This Agreement shall commence from the first pay period on or after 6 December 1996 and shall continue in effect for twelve (12) months from date of ratification of this Agreement.

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.—RESOLUTION OF DISPUTES PROCEDURE

In order to minimise the effect of disputes that may arise between the parties or between Brambles and its Employees, it is agreed that the following procedure will be observed.

a) Where a dispute, grievance or other question arises, the Employee concerned shall raise the matter with the appropriate Supervisor or other nominated representative. At the Employee's option, the Shop Steward may also be present.

b) If not satisfactorily settled after twenty four (24) hours, or in cases where the matter is of such a nature as to warrant the omission of the step detailed in subclause a) hereof, the Shop Steward and the Employee(s) concerned shall discuss the matter with the appropriate Brambles representative.

c) After a twenty four (24) hour 'cooling off' period if satisfaction is not achieved, the Shop Steward shall refer the matter to an appropriate full time official of the Union, who shall discuss the matter with the appropriate representative of Brambles.

d) After a twenty four (24) hour 'cooling off' period, if the matter is not resolved, it shall be referred to the State Office of the AWU and a senior officer of Brambles who shall endeavour to resolve the matter.

e) Throughout the foregoing procedure, normal work shall continue. No party shall be prejudiced to final settlement by the continuance of work in accordance with this subclause.

f) Each of the foregoing steps shall be followed in good faith and without any undue or unreasonable delay by any party.

g) This procedure shall not apply in the event of any genuine issue involving the safety of the employee, or other person, mobile crane or any other property, whether belonging to the employer or any other person, corporation or entity.

h) At any stage of this procedure, either party may refer the matter to the Western Australian Industrial Relations Commission for determination.

i) Any significant departure from the procedure by the employees outlined above will result in the ensuing phased increase in wage rates next scheduled for introduction being deferred for a period of three (3) months.

Any significant departure by Brambles from the procedure outlined above will result in the ensuing phased increase in wage rates next scheduled for introduction being brought forward by three (3) months.

j) Normal work shall continue during National or Statewide disputes.

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 AWARD

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.

9.—NO REDUCTION

No employee shall suffer a reduction in income or conditions solely as a result of the making of this Agreement.

10.—CONTRACT OF EMPLOYMENT

An employee shall be notified by Brambles in writing at the time of engagement, whether the engagement is casual, part time, full time or temporary.

Except for employees engaged as casual, employment shall be by the week.

11.—HOURS

For the purpose of establishing rosters the hours of work, under this Agreement, shall be deemed to average forty (40) hours per week.

Employees will be required to perform a combination of the following shifts:

Day shift, night shift and overtime shift.

The number of days that can be worked consecutively prior to a rostered period off duty shall be no more than thirteen (13).

The starting time for shifts will be determined according to operational requirements by agreement between Brambles and the majority of employees, so affected.

12.—PAYMENT OF WAGES

Wages shall be paid by the employer weekly by electronic transfer of funds into the employee's nominated account.

13.—SAFETY FOOTWEAR AND PROTECTIVE CLOTHING

An issue of company uniform, including one pair of safety footwear shall be issued on commencement of employment.

Replacement protective clothing and items of uniform shall be provided upon satisfactory proof of fair wear and tear.

14.—SHIFT ALLOWANCE

In lieu of shift allowance Brambles will pay for the cost of the airfare upon the Placer (Granny Smith) acceptance to and from site at the end of each work cycle which is currently six weeks for all operators excepting those employed on the crusher feed where it is four weeks. If employees wish to make their own travel arrangements, Brambles will pay the employee $150 per trip.

15.—ANNUAL LEAVE

1) Employees shall be entitled to twenty (20) working days leave annually after twelve (12) months continuous service. In addition a 17.5% loading will be paid on annual leave entitlements and will be paid on pro rata accrued leave on termination of employment.

2) Annual leave may be taken at a time mutually agreed between the employer and the employee provided that in the absence of reaching agreement the employer may fix the time of taking the leave within a period of three (3) months from the date of entitlement and after not less than one (1) month's notice to the employee.

3) Payment for a period of annual leave shall be eight (8) hours per annual leave day at the employee's ordinary rate of pay.

16.—SUPERANNUATION

Brambles shall pay superannuation contributions for all employees into an approved superannuation fund and contributions will be as specified under the Superannuation Guarantee Charge legislation.

17.—PARENTAL LEAVE

All employees shall be entitled to fifty two (52) weeks parental leave after twelve (12) months continuous service. The leave is to be taken after the birth or adoption of a child except in the case of female employees when such leave can commence prior to the date of confinement for health or safety reasons. In such case the total period of such leave will not exceed fifty two (52) weeks.

18.—REDUNDANCY

If an employee has been informed that he/she is or is to be made redundant because of a change in manning levels or skill requirement at the Placer operations and no other suitable positions are available in similar operations, he/she shall receive eight (8) hours paid leave to seek other employment. This is only provided by the employer during the notice period of termination.

In addition to the period of notice prescribed for ordinary termination and subject to further order of the Commission, an employee whose employment is terminated shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of Continuous Leave	Severance Pay
Less than 1 year	Nil
1 year but less than 2 years	4 weeks pay
2 years but less than 3 years	6 weeks pay
3 years but less than 4 years	7 weeks pay
4 years and over	8 weeks pay

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

Employee Leaving During Notice:

An employee whose employment is to be terminated in accordance with this clause may terminate his or her employment during the period of notice and if this occurs, shall be entitled to the provisions of this clause as if the employee remains with the employer until expiry of such notice provided that in such circumstances, the employee shall not be entitled to payment in lieu of notice.

Employee Exempted:

This clause shall not apply where employment is terminated as a result of conduct that justifies dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks.

19.—AIM OF AGREEMENT

1. It is the objective of the parties to this Agreement to implement workplace practices so as to provide for more flexible working arrangements, which improve the efficiency and productivity of the enterprise, enhance skills and job satisfaction and assist positively in ensuring that Brambles become a more efficient enterprise.

2. The parties agree that the objectives of this Agreement are to facilitate:

a) flexible working hours
b) workplace productivity
c) the development and maintenance of the most productive and harmonious working relationship obtainable and abiding by the Code of Conduct in Schedule 2
d) to increase the job security, job satisfaction, training opportunities and development of career paths

3. A training programme shall be established and implemented within two months of the commencement of this Agreement that takes into account

a) the availability of training courses and career opportunities to employees
b) dissemination of information on the training programme and availability of training courses and career opportunities to employees
c) the recommending of individual employees for training and reclassification
d) monitoring and advising management and employees regarding the ongoing effectiveness of the training

4. It is agreed that if any additional training in accordance with the programme developed pursuant to subclause 2) hereof should be undertaken by an employee, that training may be undertaken either on or off the job and if the training is undertaken during rostered working hours, the employee concerned shall not suffer any loss of earnings.

5. Where training is undertaken outside normal working hours, payment shall be at the employee's ordinary rate.

6. All costs associated with approved training shall be paid for by Brambles subject to satisfactory proof by the employee of such costs.

7. Any disputes arising in relation to this clause shall be subject to the provisions of Clause 6—Resolution of Disputes Procedure of this Agreement.

20.—INTRODUCTION OF CHANGE

1. Brambles Duty to Notify:

a) Where Brambles has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, Brambles shall notify the employees who may be affected by the proposed changes.
b) 'Significant effects' include termination of employment, major changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

21.—PERSONNEL SELECTION AND CAREER PATH

1. The objectives of this provision is to choose the best person for the job.

2. Appointments will be on merit. Criteria for the selection will be based upon objective job related competencies.

3. Brambles shall, at all times, embrace the principles of equal opportunity and fair treatment.

22.—DEDUCTION OF UNION SUBSCRIPTIONS

1. Brambles shall make available the ability to deduct such subscriptions as indicated by the Union and agreed to by the employee. Subscriptions shall be deducted from each pay period.

2. Payroll Deduction Authority Forms shall be completed by employees. Where Brambles requires a standard procuration form, that form shall be used.

3. Where required by Brambles or Union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the Employer's pay office.

4. a) Brambles shall commence deduction of subscriptions from the first appropriate period following receipt of a completed Payroll Deduction Authority Form and continue deducting throughout the employee's period of employment, except as provided in subclause 5. of this clause, or until that Authority is cancelled in writing by the employee.

b) Where the Payroll Deduction Authority Form authorises Brambles to deduct union subscriptions in accordance with the rules of the Union, the Union shall notify Brambles in writing of the level of union subscriptions to be deducted.

Brambles shall implement any change to union subscriptions no later than one month after being notified by the Union, except where the Union nominates a later date.

5. The collection of any nomination fee, arrears, levies or fines is not the responsibility of Brambles.

6. Brambles 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.

7. Brambles shall forward subscriptions deducted, together with supporting documentation, to the Union at such intervals as are agreed between Brambles and the Union.

23.—CLASSIFICATION DEFINITIONS

Grade 1 Employee shall mean trainee operator

Grade 2 Employee shall mean trained loader operator, truck driver, grader operator, water truck driver.

Grade 3 Employee shall mean a competent and experienced operator.

The rates of pay shall be as per Schedule 1.

24.—ACCOMMODATION

Accommodation will be supplied free of charge in the Placer (Granny Smith) village. All parties are bound to abide by the camp rules as advised by Placer (Granny Smith).

25.—DECLARATION AND SIGNATORIES

1. Declaration:

This enterprise agreement has been negotiated through consultation between management and employees. The contents of the agreement has been canvassed with all parties.

All parties are entering into this agreement with full knowledge as to the content and effect of the document.

The parties declare that this agreement:

a) is not contrary to public interest
b) is not unfair, harsh or unconscionable
c) was at no stage entered into under duress, and;
d) reflects the interest and desires of the parties.

2. Signatories:

This agreement is made at Perth on this date 6.12.96

(Signed) indecipherable
Signed for and on behalf of
Brambles Western Australia

Helen Carey (Signed)
In the presence of

(Signed) indecipherable
Signed for and on behalf of
the Brambles Employees at the
Placer (Granny Smith) Operation

Helen Carey (Signed)
In the presence of

COMMON SEAL
indecipherable (Signed)
Branch Secretary
Joe Anderton (Signed)
Branch President
Signed for and on behalf of
The Australian Workers Union
(West Australian Branch)
Industrial Union of Workers

indecipherable (Signed)
In the presence of

SCHEDULE 1

As from 1 December 1996 subject to the ratification by the Western Australian Industrial Relations Tribunal:

GRADE	BASE RATE	HOURLY RATE
1	$396.40	$ 9.91
2	$518.40	$12.96
3	$534.00	$13.35

SCHEDULE 2

CODE OF CONDUCT

AIMS

This Code of Conduct aims to provide a system for identifying and maintaining acceptable employee behaviour and rectifying persistent poor work performance in a positive way by:

1. Identifying to the employee behaviour that is unacceptable to Brambles Western Australia
2. Providing employees, through a counselling and disciplinary process an opportunity to correct unacceptable behaviour and/or to rectify poor work performance
3. Ensuring that where unacceptable behaviour or poor work performance persists, despite counselling and disciplinary action, that any termination that may ensue is conducted in a manner that is demonstrably fair and just.

Obligations of Employees

All employees of Brambles Western Australia are expected to:

- Carry out their duties and responsibilities to the limit of their competency and skill
- Positively contribute to the achievement of the work objectives of their respective business unit
- Positively participate in approved, relevant training and to provide on the job training to others where appropriate
- Comply with work practices that are designed to promote the objective of a safe and healthy workplace
- Comply with all reasonable and lawful instructions
- Treat other employees of Brambles Western Australia, clients, associates and members of the general community with due respect, courtesy and good manners
- Comply with the terms, conditions and commitment of the Enterprise Agreement

Unacceptable behaviour or poor work performance may include but not be limited to the following:

- consistent absenteeism without valid reason;
- lack of application to duties and responsibilities;
- derogatory speech or action;
- failure to comply with legal, safe and reasonable instructions
- illegal, dishonest acts or acts which directly conflict with the interest of Brambles Western Australia;
- intimadatory acts or assaults;
- drunkenness, intoxication and illicit drug use.

Disciplinary Procedures

The following disciplinary procedures shall apply for breaches of the Code of Conduct.

For breaches of the Code of Conduct all Brambles Western Australia employees shall be subject to a process of:

- Verbal warning/counselling;
- written warnings/counselling/training/re-training;
- termination.

Warnings

When issuing warnings (verbal or written) the following matters should be taken into consideration:

I. employees are to be given the opportunity to have a witness or union delegate in attendance;

II. employees are to be advised of the nature of the specific issue generating the warning and Company's expectations in respect to that issue;

III. employees are to be given an opportunity to respond to the matter(s) raised in (ii);

IV. employees are to be advised that disciplinary action will continue should the problem(s) identified not be remedied. In this regard employees should be aware that termination of their contract of employment may ultimately occur;

V. employees are to be made aware that any written warnings issued will be placed on their personnel file;

VI. employees are to be asked to sign a copy of the warning, any refusal to do so should simply be noted on the warning document;

Summary Dismissal

In circumstances of serious misconduct ie misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period; Brambles may summarily terminate an employee's contract of employment.

BUTTERCUP BAKERIES (W.A.)
ENTERPRISE AGREEMENT 1997
No. AG 40 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Quality Bakers Australia Ltd T/A Buttercup Bakeries

and

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and Others.

No. AG 40 of 1997.

COMMISSIONER J.F. GREGOR.

27 February 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 40 OF 1997.

HAVING heard Mr J Uphill on behalf of the first named party and Ms R Ho and Mr G Sturman on behalf of the second named parties, 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 Buttercup Bakeries (W.A.) Enterprise Agreement 1997, filed in the Commission on 3 February 1997, and as subsequently amended by the parties, signed by me for identification be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

1.—TITLE

This agreement shall be known as the Buttercup Bakeries (W.A.) Enterprise Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award/Existing or Expired Enterprise Agreements
7. Proposed Changes—Working Draft
8. Wages
9. No Reduction
10. Dispute Settling Procedures
11. Signatories
Schedule A
Schedule B

3.—AREA AND SCOPE

This agreement shall apply at Buttercup Bakeries, 38 Crocker Driver, Malaga, in the state of Western Australia in respect of all employees who are covered by the terms of the Bakers (Metropolitan) Award No. 13 of 1987, the Breadcarters' Metropolitan Award No. 35 of 1963, the Metal Trades (General) Award 1966, the Bakers' (Country) Award No. 18 of 1977 and the Breadcarters' (Country) 1976 Award. It is estimated that this Agreement shall apply to 250 employees.

4.—PARTIES BOUND

This Agreement shall be binding on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, Western Australian Branch, the Transport Workers' Union of Australia, Industrial Union of Workers', Western Australian Branch, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and the Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch and Quality Bakers Australia Limited trading as Buttercup Bakeries.

The parties to this Agreement expressly accept that they are bound by the terms of this Agreement during its duration and will oppose any application by other parties to be joined to this Agreement.

5.—DATE AND PERIOD OF OPERATION

(a) This Agreement shall operate from the beginning of the first pay period commencing on or after the date of approval by the Western Australian Industrial Relations Commission and shall remain in force for a period of twelve (12) months.

(b) The parties to this Agreement are genuinely committed to negotiating in good faith during the terms of this Agreement, to reach a further Enterprise Agreement, preferably within 6 months of this Agreement being registered or at least prior to the expiration of the term of this Agreement.

(c) The parties agree to commence negotiations to achieve a further Enterprise Agreement immediately following the registration of this Agreement.

(d) By the consent of the parties, application will be made to the Western Australian Industrial Relations Commission to register such further Agreement as soon as agreement is reached.

(e) If no changes have been effected by the expiration of the term of this Agreement, either party may elect to return to the situation which existed immediately prior to the registration of this Agreement.

(f) The parties agree that this Agreement shall be registered without prejudice to the seeking of a federally registered Award or any other Agreement at any time.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement is to incorporate and operate in conjunction with the Bakers (Metropolitan) Award No. 13 of 1987, the Breadcarters' (Metropolitan) Award No. 35 of 1963, the Metal Trades (General) Award 1966 and Enterprise Bargaining Agreement No. AG93 of 1993 and AG46 of 1996; the Bakers (Country) Award No. 18 of 1977 and the Breadcarters' (Country) 1976 Award.

By consent of all parties, this Agreement may be varied by the Western Australian Industrial Relations Commission upon application, provided that such variation will not be contrary to the principles or standards of the Commission.

7.—PROPOSED CHANGES—WORKING DRAFT

By a process of consultation and negotiation the parties agree to provide workplace and employment conditions under which the services of Buttercup can be delivered in an efficient, flexible and profitable manner.

The proposed changes which we have failed to reach agreement upon to date will form the basis for ongoing discussion over the twelve months of the Agreement. Those changes covered by this Agreement shall be as contained in Schedule A which may be added to or deleted from upon agreement by both parties.

It will be the joint intent of the parties to work together in a constructive, managed and cooperative manner in order to ensure the development and implementation of a comprehensive workplace reform strategy that reflects industry best practices and supports the long term viability of the enterprise and hence the employment security of the employees.

8.—WAGES

As a gesture of good faith and to further demonstrate the Company's genuine intention to pursue workplace reform, the Company will increase wage rates for all employees covered by this Agreement by 5%, effective from the first pay period on or after the ratification of this Agreement by the Western Australian Industrial Relations Commission. The wages payable to employees covered by this Agreement shall be as contained in Schedule B.

Any further increase within the term of this Agreement will be achieved from cost savings or productivity improvements which have eventuated as a direct and demonstrable result of changes negotiated during the term of the Agreement.

9.—NO REDUCTION

This Agreement does not involve a reduction in ordinary time earnings, standard hours of work, paid annual or long service leave.

10.—DISPUTE SETTLING PROCEDURE

Any questions, disputes or difficulties associated with this Agreement shall be dealt with in accordance with the dispute settling procedure as set out in the relevant Award.

11.—SIGNATORIES

• Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, Western Australian Branch;

• Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch;

• Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch; and

• Quality Bakers Australia Limited, trading as Buttercup Bakeries.

DECLARATION AND SIGNATORIES

This Agreement has been negotiated through extensive consultation, commitment and participation between management, employees and unions, both directly and through the consultative committee.

The content of this Agreement has been canvassed with all parties.

All parties are entering into this Agreement will full knowledge as to the content and effect of the document. The parties declare that this Agreement:

(a) is not contrary to the public interest;

(b) is not unfair, harsh or unconscionable;

(c) was at no stage entered into under duress;

(d) reflects the interests, objectives and needs of the parties; and

(e) when viewed as a whole, does not disadvantage employees or reduce the entitlements or protections under the award.

Signed for and on behalf of

The Australian Liquor, Hospitality & Miscellaneous Workers' Union, Miscellaneous Workers Division, Western Australian Branch

.....*Signed*..... Date: 21/02/97

SHARRYN JACKSON

Signed for and on behalf of

The Transport Workers' Union, Industrial Union of Workers, Western Australian Branch.

.....*Signed*..... Date: 24/02/97

JAMES McGIVERON

Signed for and on behalf of

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, WA Branch.

.....*Signed*..... Date: 26/02/97

K. PECKHAM

Signed for and on behalf of

Quality Bakers Australia Limited, trading as Buttercup Bakeries.

.....*Signed*..... Date: 18/02/97

J. O'ROURKE

SCHEDULE A

PRODUCTIVITY & EFFICIENCY ISSUES

• Flexible hours to handle changing market requirements

• Reduction in production waste

• Reduction in sales waste, returns and crate losses

• Reduction in motor vehicle operating costs, maintenance and repairs

• Salary based payments incorporating wages and allowances

• Reduction in absenteeism

• Laundering of uniforms

• Training—rewards of competency levels achieved

• Occupational health and safety—reduction in lost time accidents

SCHEDULE B

RATES OF PAY

	Current Base Rate as at 15/1/97	As per E.A. Agreement Rate Plus 5%
METRO		
Loader	383.20	402.36
Operator	398.50	418.43
Breadcarter	406.20	426.51
Engineer LV C10	441.20	463.26
Engineer LV C12	388.60	408.03
Engineer LV C9	462.10	485.21
Baker	441.20	463.20
Foreman Baker	466.50	489.83
Doughmaker	457.10	479.95
Bakers Assistant	370.40	388.92
COUNTRY		
Baker	427.00	448.35
Loader	383.20	402.36
Operator	398.50	418.42
Engineer LV C10	441.20	463.26
Breadcarter	406.20	426.51

CONSTRUCTION WORKER LEVEL 1 (FIT OUT AND FINISH) CHEEDITHA ABORIGINAL GROUP TRAINEESHIP AGREEMENT 1996
No. AG 5 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Cheeditha Aboriginal Group Inc.

No. AG 5 of 1997.

Construction Worker Level 1 (Fit Out and Finish) Cheeditha Aboriginal Group Traineeship Agreement 1996

COMMISSIONER P E SCOTT.

5 March 1997.

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 Construction Worker Level 1 (Fit Out and Finish) Cheeditha Aboriginal Group Traineeship Agreement 1996 in the terms of the following schedule be registered on the 6th day of February 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level 1 (*Fit Out and Finish*) Cheeditha Aboriginal Group Traineeship Agreement 1996.

2.—ARRANGEMENT

This Agreement shall be arranged as follows:

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objectives
6. Definitions
7. Duration
8. Single Enterprise
9. Relationship with Awards
10. Dispute Settlement Procedure
11. Training Conditions
12. Employment Conditions
13. Wages and Allowances
14. Clothing and Footwear
15. Special Arrangements

APPENDIX A—Signatories
APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on:

(a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).

(b) The Cheeditha Aboriginal Group Inc. (the Company) who is the signatory to this Agreement.

(c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons:

(i) who are undertaking a Traineeship (as defined); and

(ii) who are employed by the Company; and

(iii) whose employment is, or otherwise would be, covered by the Award.

(b) There will be approximately 12 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be AHB.

5.—OBJECTIVES

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

6.—DEFINITIONS

"approved training" means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in clause 11.- Training Conditions paragraph (f).

"the Award" means the *Building Trades (Construction) Award 1987, No. 14 of 1978.*

"Trainee" means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

"Traineeship" means the *Fit Out and Finish* Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

"Traineeship Agreement" means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

"Parties to the Traineeship Scheme" means the Union and the Company who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

"NETTFORCE" means the National Employment and Training Task Force.

"State Training Authority" means the Western Australian State Training Board.

Reference in this Agreement to "**the State Training Authority or NETTFORCE"** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

"National Training Wage Interim Award" means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

"appropriate State legislation" means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in *Clause 41A(2) of the Western Australian 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 the Agreement and the Award the Agreement shall apply.

10.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined in the same terms of Clause 46.—Settlement of Disputes of the Award.

11.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 400 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Company and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Company shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Company shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Company agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level I qualification. In addition, successful Trainees will be issued with certificates of attainment in the modules of the *Fit Out and Finish* Traineeship upon the Trainees reaching that level of competency.

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining the role and functions of the Union and enrolment of Trainees as members.

12.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Company. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Company and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Company shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Company chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Company is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for nonshift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

13.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	$
Base Rate	329.00
Industry Allowance	15.90
Special allowance	7.70
Fares Allowance	As per Award
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(ii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each Trainee by the Company within 5 days of commencement.

(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 Trainee (to be issued on or before 1 April).

2. The Company will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

15.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level B of the National Training Wage Interim Award.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—SIGNATORIES

SIGNATORIES

For and on behalf of the Company

(signed) 20/11/1996

.....

For and on behalf of the
Western Australian Builders' Labourers,
Painters and Plasterers Union of Workers

SECRETARY (signed) 21/11/1996

.....

APPENDIX B—TRAINING FRAMEWORK

Course Outcomes

The course aims to provide:

* accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.
* an accredited training program that incorporates the following Key Competencies at Performance Level I—collecting, analysing and organising information; communicating ideas and information- planning and organising; working with others; using mathematical ideas and techniques; solving problems; and using technology.
* training and skill development in areas such as: communications, occupational health and safety, work Organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 16 compulsory modules. The module titled, Trainee Induction FOF001, is a prerequisite for all other modules in the program. There are no other prerequisites and therefore there is no prescribed sequence for the delivery of the modules in the program.

Module Code	Module Title
FOF001	Trainee Induction
FOF002	Occupational Health and Safety
FOF003	Industry Calculations
FOF004	Plan Reading and Interpretation
FOF005	Workplace Communication
FOF006	Quality Concepts
FOF007	Work Organisation
FOF008	Construction Process
FOF009	Materials Handling and Storage
FOF010	Basic Concrete
FOF011	Plant and Equipment
FOF012	Hand Tools, Power Tools and Accessories
FOF013	Manual and Mechanical Excavation
FOF014	Demolition
FOF015	Scaffolding
FOF016	*Basic Fit Out and Finish Skills*
Duration	400 Hours [nominal]

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one day per week of instruction over a twelve month period. During the remaining four days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through:

* formal training;
* work experience; and
* life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

CONSTRUCTION WORKER LEVEL 1 (FIT OUT AND FINISH) MALLINGBARR ABORIGINAL CORPORATION TRAINEESHIP AGREEMENT 1996 No. AG 4 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Mallingbarr Aboriginal Corporation.

No. AG 4 of 1997.

Construction Worker Level 1 (Fit Out and Finish) Mallingbarr Aboriginal Corporation Traineeship Agreement 1996.

COMMISSIONER P.E. SCOTT.

5 March 1997.

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 Construction Worker Level 1 (Fit Out and Finish) Mallingbarr Aboriginal Corporation Traineeship Agreement 1996 in the terms of the following schedule be registered on the 6th day of February 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level 1 (Fit Out and Finish) Mallingbarr Aboriginal Corporation Traineeship Agreement 1996.

2.—ARRANGEMENT

This Agreement shall be arranged as follows:

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objectives
6. Definitions
7. Duration
8. Single Enterprise
9. Relationship with Awards
10. Dispute Settlement Procedure
11. Training Conditions
12. Employment Conditions
13. Wages and Allowances
14. Clothing and Footwear
15. Special Arrangements

APPENDIX A—Signatories
APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on:

(a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).

(b) The Mallingbarr Aboriginal Corporation (the Company) who is the signatory to this Agreement.

(c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons:

(i) who are undertaking a Traineeship (as defined); and

(ii) who are employed by the Company; and

(iii) whose employment is, or otherwise would be, covered by the Award.

(b) There will be approximately 6 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be the Aboriginal Housing Board.

5.—OBJECTIVES

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

6.—DEFINITIONS

"approved training" means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in clause 11.- Training Conditions paragraph (f).

"the Award" means the *Building Trades (Construction) Award 1987, No. 14 of 1978.*

"Trainee" means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

"Traineeship" means the *Fit Out and Finish* Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

'Traineeship Agreement" means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

"Parties to the Traineeship Scheme" means the Union and the Company who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

"NETTFORCE" means the National Employment and Training Task Force.

"State Training Authority" means the Western Australian State Training Board.

Reference in this Agreement to **"the State Training Authority or NETTFORCE"** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

"National Training Wage Interim Award" means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

"appropriate State legislation" means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Western Australian 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 the Agreement and the Award the Agreement shall apply.

10.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined in the same terms of Clause 46.—Settlement of Disputes of the Award.

11.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 400 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Company and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Company shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Company shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Company agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level 1 qualification. In addition, successful Trainees will be issued with certificates of attainment in the modules of the *Fit Out and Finish* Traineeship upon the Trainees reaching that level of competency.

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining the role and functions of the Union and enrolment of Trainees as members.

12.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Company. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Company and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Company shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Company chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Company is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for nonshift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

13.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	$
Base Rate	329.00
Industry Allowance	15.90
Special allowance	7.70
Fares Allowance	As per Award
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(it) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

14.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each Trainee by the Company within 5 days of commencement.

(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 Trainee (to be issued on or before 1 April).

2. The Company will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

15.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level B of the National Training Wage Interim Award.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—SIGNATORIES

SIGNATORIES

For and on behalf of the Company

(signed) 28/10/1996

.....

For and on behalf of the
Western Australian Builders' Labourers,
Painters and Plasterers Union of Workers

ACTING SECRETARY (signed) 28/10/1996

.....

Common Seal of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

APPENDIX B—TRAINING FRAMEWORK

Course Outcomes

The course aims to provide:

* accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.
* an accredited training program that incorporates the following Key Competencies at Performance Level I—collecting, analysing and organising information; communicating ideas and information- planning and organising; working with others; using mathematical ideas and techniques; solving problems; and using technology.
* training and skill development in areas such as: communications, occupational health and safety, work Organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 16 compulsory modules. The module titled, Trainee Induction FOF001, is a prerequisite for all other modules in the program. There are no other prerequisites and therefore there is no prescribed sequence for the delivery of the modules in the program.

Module Code	Module Title
FOF001	Trainee Induction
FOF002	Occupational Health and Safety
FOF003	Industry Calculations
FOF004	Plan Reading and Interpretation
FOF005	Workplace Communication
FOF006	Quality Concepts
FOF007	Work Organisation
FOF008	Construction Process
FOF009	Materials Handling and Storage
FOF010	Basic Concrete
FOF011	Plant and Equipment
FOF012	Hand Tools, Power Tools and Accessories
FOF013	Manual and Mechanical Excavation
FOF014	Demolition
FOF015	Scaffolding
FOF016	*Basic Fit Out and Finish Skills*
Duration	400 Hours [nominal]

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one day per week of instruction over a twelve month period. During the remaining four days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through:

* formal training;
* work experience; and
* life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

CONSTRUCTION WORKER LEVEL 1 (FIT OUT AND FINISH) MIRIMA ABORIGINAL CORPORATION TRAINEESHIP AGREEMENT 1996 No. AG 2 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Mirima Aboriginal Corporation.

No. AG 2 of 1997.

Construction Worker Level 1 (Fit Out and Finish) Mirima Aboriginal Corporation Traineeship Agreement 1996.

COMMISSIONER P E SCOTT.

5 March 1997.

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 Construction Worker Level 1 (Fit Out and Finish) Mirima Aboriginal Corporation Traineeship Agreement 1996 in the terms of the following schedule be registered on the 6th day of February 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level 1 (*Fit Out and Finish*) Mirima Aboriginal Corporation Traineeship Agreement 1996.

2.—ARRANGEMENT

This Agreement shall be arranged as follows:

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objectives
6. Definitions
7. Duration
8. Single Enterprise
9. Relationship with Awards
10. Dispute Settlement Procedure
11. Training Conditions
12. Employment Conditions
13. Wages and Allowances
14. Clothing and Footwear
15. Special Arrangements

APPENDIX A—Signatories
APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on:

(a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).

(b) The Mirima Aboriginal Corporation (the Company) who is the signatory to this Agreement.

(c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons:

(i) who are undertaking a Traineeship (as defined); and

(ii) who are employed by the Company; and

(iii) whose employment is, or otherwise would be, covered by the Award.

(b) There will be approximately 7 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be Aboriginal Housing Board.

5.—OBJECTIVES

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

6.—DEFINITIONS

"approved training" means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in clause 11.- Training Conditions paragraph (f).

"the Award" means the *Building Trades (Construction) Award 1987, No. 14 of 1978.*

"Trainee" means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

"Traineeship" means the *Fit Out and Finish* Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

"Traineeship Agreement" means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

"Parties to the Traineeship Scheme" means the Union and the Company who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

"NETTFORCE" means the National Employment and Training Task Force.

"State Training Authority" means the Western Australian State Training Board.

Reference in this Agreement to "**the State Training Authority or NETTFORCE"** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

"National Training Wage Interim Award" means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

"appropriate State legislation" means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in *Clause 41A(2) of the Western Australian 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 the Agreement and the Award the Agreement shall apply.

10.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined in the same terms of Clause 46.—Settlement of Disputes of the Award.

11.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 400 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Company and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Company shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Company shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Company agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level I qualification. In addition, successful Trainees will be issued with certificates of attainment in the modules of the *Fit Out and Finish* Traineeship upon the Trainees reaching that level of competency.

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining the role and functions of the Union and enrolment of Trainees as members.

12.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Company. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Company and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Company shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Company chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Company is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for nonshift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

13.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	$
Base Rate	329.00
Industry Allowance	15.90
Special allowance	7.70
Fares Allowance	As per Award
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(ii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each Trainee by the Company within 5 days of commencement.

(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 Trainee (to be issued on or before 1 April).

2. The Company will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

15.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level B of the National Training Wage Interim Award.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—SIGNATORIES

SIGNATORIES

For and on behalf of the Company

(signed) 22/11/1996

.....

For and on behalf of the
Western Australian Builders' Labourers,
Painters and Plasterers Union of Workers

SECRETARY (signed) 12/12/1996

.....

Common Seal of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

APPENDIX B—TRAINING FRAMEWORK

Course Outcomes

The course aims to provide:

* accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.
* an accredited training program that incorporates the following Key Competencies at Performance Level I—collecting, analysing and organising information; communicating ideas and information- planning and organising; working with others; using mathematical ideas and techniques; solving problems; and using technology.

* training and skill development in areas such as: communications, occupational health and safety, work Organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 16 compulsory modules. The module titled, Trainee Induction FOF001, is a prerequisite for all other modules in the program. There are no other prerequisites and therefore there is no prescribed sequence for the delivery of the modules in the program.

Module Code	Module Title
FOF001	Trainee Induction
FOF002	Occupational Health and Safety
FOF003	Industry Calculations
FOF004	Plan Reading and Interpretation
FOF005	Workplace Communication
FOF006	Quality Concepts
FOF007	Work Organisation
FOF008	Construction Process
FOF009	Materials Handling and Storage
FOF010	Basic Concrete
FOF011	Plant and Equipment
FOF012	Hand Tools, Power Tools and Accessories
FOF013	Manual and Mechanical Excavation
FOF014	Demolition
FOF015	Scaffolding
FOF016	*Basic Fit Out and Finish Skills*
Duration	400 Hours [nominal]

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one day per week of instruction over a twelve month period. During the remaining four days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through:

* formal training;
* work experience; and
* life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

CONSTRUCTION WORKER LEVEL 1 (FIT OUT AND FINISH) NGURRA CONSTRUCTIONS TRAINEESHIP AGREEMENT 1996
No. AG 3 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Ngurra Constructions.

No. AG 3 of 1997.

Construction Worker Level 1 (Fit Out and Finish) Ngurra Constructions Traineeship Agreement 1996

COMMISSIONER P E SCOTT.

5 March 1997.

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 Construction Worker Level 1 (Fit Out and Finish) Ngurra Constructions Traineeship Agreement 1996 in the terms of the following schedule be registered on the 6th day of February 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level 1 (*Fit Out and Finish*) Ngurra Constructions Traineeship Agreement 1996.

2.—ARRANGEMENT

This Agreement shall be arranged as follows:

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objectives
6. Definitions
7. Duration
8. Single Enterprise
9. Relationship with Awards
10. Dispute Settlement Procedure
11. Training Conditions
12. Employment Conditions
13. Wages and Allowances
14. Clothing and Footwear
15. Special Arrangements

APPENDIX A—Signatories
APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on:

(a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).

(b) The Ngurra Constructions (the Company) who is the signatory to this Agreement.

(c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons:

(i) who are undertaking a Traineeship (as defined); and

(ii) who are employed by the Company; and

(iii) whose employment is, or otherwise would be, covered by the Award.

(b) There will be approximately 7 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be Aboriginal Housing Board.

5.—OBJECTIVES

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

6.—DEFINITIONS

"approved training" means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in clause 11.- Training Conditions paragraph (f).

"the Award" means the *Building Trades (Construction) Award 1987, No. 14 of 1978.*

"Trainee" means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

"Traineeship" means the *Fit Out and Finish* Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

"Traineeship Agreement" means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

"Parties to the Traineeship Scheme" means the Union and the Company who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

"NETTFORCE" means the National Employment and Training Task Force.

"State Training Authority" means the Western Australian State Training Board.

Reference in this Agreement to "**the State Training Authority or NETTFORCE"** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

"National Training Wage Interim Award" means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

"appropriate State legislation" means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in *Clause 41A(2) of the Western Australian 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 the Agreement and the Award the Agreement shall apply.

10.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined in the same terms of Clause 46.—Settlement of Disputes of the Award.

11.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 400 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Company and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Company shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Company shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Company agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level I qualification. In addition, successful Trainees will be issued with certificates of attainment in the modules of the *Fit Out and Finish* Traineeship upon the Trainees reaching that level of competency.

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining the role and functions of the Union and enrolment of Trainees as members.

12.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Company. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Company and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Company shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Company chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Company is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for nonshift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

13.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	$
Base Rate	329.00
Industry Allowance	15.90
Special allowance	7.70
Fares Allowance	As per Award
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(ii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each Trainee by the Company within 5 days of commencement.

(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 Trainee (to be issued on or before 1 April).

2. The Company will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

15.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level B of the National Training Wage Interim Award.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—SIGNATORIES

SIGNATORIES

For and on behalf of the Company

(signed) 16/12/1996

.....

For and on behalf of the
Western Australian Builders' Labourers,
Painters and Plasterers Union of Workers

SECRETARY (signed) 16/12/1996

.....

Common Seal of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

APPENDIX B—TRAINING FRAMEWORK

Course Outcomes

The course aims to provide:

* accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.
* an accredited training program that incorporates the following Key Competencies at Performance Level I—collecting, analysing and organising information; communicating ideas and information- planning and organising; working with others; using mathematical ideas and techniques; solving problems; and using technology.
* training and skill development in areas such as: communications, occupational health and safety, work Organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 16 compulsory modules. The module titled, Trainee Induction FOF001, is a prerequisite for all other modules in the program. There are no other prerequisites and therefore there is no prescribed sequence for the delivery of the modules in the program.

Module Code	Module Title
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FOF003	Industry Calculations
FOF004	Plan Reading and Interpretation
FOF005	Workplace Communication
FOF006	Quality Concepts
FOF007	Work Organisation
FOF008	Construction Process
FOF009	Materials Handling and Storage

Module Code	Module Title
FOF010	Basic Concrete
FOF011	Plant and Equipment
FOF012	Hand Tools, Power Tools and Accessories
FOF013	Manual and Mechanical Excavation
FOF014	Demolition
FOF015	Scaffolding
FOF016	*Basic Fit Out and Finish Skills*
Duration	400 Hours [nominal]

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one day per week of instruction over a twelve month period. During the remaining four days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through:

* formal training;
* work experience; and
* life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

DEPARTMENT OF RESOURCES DEVELOPMENT ENTERPRISE BARGAINING AGREEMENT 1996 No. PSG AG 1 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated & Others

and

Department of Resources Development & Another.

No. PSG AG 1 of 1997.

COMMISSIONER J.F. GREGOR.

26 February 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSGAG 1 OF 1997.

HAVING heard Mr A. Henderson on behalf of the first named parties and Ms T. Bowyer on behalf of the second named parties, 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 Department of Resources Development Enterprise Bargaining Agreement 1996, filed in the Commission on 30 January 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

1.—TITLE

This agreement is to be known as the Department of Resources Development Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Application of Agreement and Parties Bound
4A. Employees Covered by this Agreement
5. Effective Date of Agreement and Renewal
6. Relationship to Parent Awards
7. Definitions
8. Single Bargaining Unit
9. Joint Consultative Committee
10. Past Productivity
11. Reduction in Support Staff
12. Joint Library Facility
13. Provision of Corporate Services To Office of Energy
14. Additional Productivity Initiatives
15. Performance Measurement Mechanism
16. Investment in Excellence Program
17. Performance Development System
18. Competency Approach to Human Resource Management
18A. No Change to Conditions
19. Contract of Service
20. Hours of Work
21. Part time Employment
22. Casual Employment
23. Annual Increments
24. Overtime Allowance
25. Payroll Deductions
26. Leave Without Pay
27. Study Leave
28. Jury Duty
29. Higher Duties Allowance
30. Annual Leave
31. Long Service Leave
32. Sick Leave
33. Short Leave
34. Bereavement Leave
35. Public Holidays
36. Travelling Allowance
37. Partial Shutdown at Christmas
38. Salaries
39. Copies of Agreement
40. Dispute Resolution

Schedules

3.—AREA AND SCOPE

This agreement will apply throughout the State of Western Australia to all persons employed by the Department of Resources Development who are members or eligible to be members of the Civil Service Association of Western Australia Incorporated and the Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Union of Workers.

4.—APPLICATION OF AGREEMENT AND PARTIES BOUND

(1) This agreement shall apply to and bind the following parties

(a) Civil Service Association of Western Australia Incorporated

(b) Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Union of Workers

(c) The Department of Resources Development

4A.—EMPLOYEES COVERED BY THIS AGREEMENT

It is estimated that 40 employees will be bound by this agreement upon registration.

5.—EFFECTIVE DATE OF AGREEMENT AND RENEWAL

(1) This agreement shall operate from the date of signature by the parties and will remain in force until 28 July 1997.

(2) In the event that a new agreement has not been entered into at the conclusion of the 12 month period or subsequent date agreed in accordance with (i) of this subclause, the parties may:

(i) agree in writing to its continuation for a further period not exceeding twelve months: or

(ii) withdraw from the agreement in accordance with the provisions of section 41(7) of the Industrial relations Act 1979: or

(iii) cancel the agreement in accordance with section 43(1) of the Industrial Relations Act 1979.

(3) At least three months prior to the expiry of the term of the agreement or any subsequent date agreed in accordance with subclause 2(i) of this clause, the parties will commence negotiations with the aim of formulating a new agreement to be registered by the relevant date.

(4) At any time during the period of this agreement the parties may, by mutual consent in writing, agree to cancel the agreement or enter into a new agreement.

6.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read wholly in conjunction with the Public Service Award 1992 or the Catering Employees and Tea Attendants (Government) Award 1982. In the case of any inconsistencies this agreement shall have precedence to the extent of the inconsistencies.

7.—DEFINITIONS

In this agreement the following expressions shall have the following meaning:

"CSA" means the Civil Service Association of WA Inc.

"chief executive officer" means the chief executive officer of the Department of Resources Development, or the person acting as chief executive officer or person having the delegated authority of the chief executive officer.

"CSCLR" means the Cabinet Sub-Committee on Labour Relations.

"Employee" means someone employed under the Public Sector Management Act 1994 on a full-time, part-time or casual basis within the Department of Resources Development.

"*Employer*" means the chief executive officer of the Department of Resources Development.

"*Department*" or "*DRD*" means the Department of Resources Development.

8.—SINGLE BARGAINING UNIT

For the purposes of negotiating this and future Industrial Agreements a SBU has been formed as a representative of all parties. The SBU will continue to monitor the implementation of the agreement and be responsible for its replacement.

9.—JOINT CONSULTATIVE COMMITTEE

(1) A Joint Consultative Committee has been established to facilitate workplace change through a consultative process and in particular to provide information to the SBU.

(2) The parties to this agreement agree that consultation will provide employees with an opportunity to participate in decisions which impact on productivity and their working lives and therefore support the principle of consultation. It is agreed that effective consultation is dependent upon:

(a) a commitment to working together to achieve common goals,

(b) a mutual commitment from management and employees to achieving workable and acceptable solutions, and

(c) information sharing.

10.—PAST PRODUCTIVITY

(1) In mid 1993 a process was started in the Department to review the basic objectives and operating procedures. A client survey was commissioned and our key clients were asked to provide their perceptions as to the effectiveness of the Department's operations.

(2) Using this input as a starting point an extensive consultation process involving staff and other key stakeholders, including the Minister for Resources Development, was undertaken. The Department's corporate objectives were redefined and clearly articulated. This process highlighted a number of deficiencies in the Department structure which prevented the Department achieving the optimum results with existing resources.

(3) To help facilitate this new focus, the structure of the Department was altered to more clearly identify responsibilities and to ensure accountability. Responsibility for a range of key functions was delegated down the management structure to ensure that there was a clearer link between the management of the various projects and the responsibility for the outcomes associated with those projects.

(4) To implement this new vision, a detailed operational plan has also been developed and is being used as the basis of the Department's operations. The operational plan is one of the major management techniques used by the Executive to oversee the Department's progress in meeting objectives and achieving outcomes within existing resources.

(5) The new structure has improved the Department's client focus by creating divisions which encompass all of the major Departmental functions, to ensure that clients receive consistent service from project managers who handle their proposals from initial approach to finalisation.

(6) In addition, a major new function, that of "Promotions", was added to the Department's activities.

(7) Promotions branches have been established in the North and Inland and South West Divisions of the Department. The addition of the promotions function is consistent with stated Government policy and with a need identified in the client survey. The new Promotions function is therefore a response to both the requirements of Government and of the Department's other major clients—the resource industry.

(8) The new Promotions function is being conducted without any reduction in the quality or level of service provided in other branches of the Department.

(9) The Department's ability to perform an additional function, without any increase in staff numbers, represents a significant productivity gain.

(10) Resources have been allocated to this new activity by:

(a) Re-aligning a number of existing tasks into this area.

(b) Taking on new tasks and providing the resources from other areas of the Department. This has been achieved without reducing the level of service being provided by those areas.

(11) With the need to allocate additional staff to the new Promotions sub-program, existing Departmental functions had to be maintained using fewer resources. This has been possible because of the productivity savings that have resulted from the other initiatives detailed in this agreement.

11.—REDUCTION IN SUPPORT STAFF

(1) As a result of an internal review undertaken in early 1995, the Department identified a change in work requirements for a number of support staff, primarily those undertaking word processing tasks. It was clearly identified that the introduction of new technology and the resultant increase in authors undertaking their own word processing work was resulting in a decrease in demand for dedicated word processing staff.

(2) As a result, a number of positions were vacated and abolished. The extra capacity created by this was moved to operational areas of the Department to help cope with the greatly increased workload associated with the surge in resource development activity that has taken place over the last 2 years and is expected to continue for some time.

12.—JOINT LIBRARY FACILITY

(1) The Department of Resources Development shares a library facility with the Department of Commerce and Trade. This shared arrangement has resulted in a reduced staffing requirement for both agencies. The saving in FTE has been moved to the operational area of the Department to help cope with the greatly increased workload associated with the surge in resource development activity that has taken place over the last 2 years and is expected to continue for some time.

(2) This has been achieved without any consequent reduction in the level of service provided. The sharing of this resource also allows for efficiencies in purchasing of materials etc. for the library.

13.—PROVISION OF CORPORATE SERVICE FUNCTIONS TO THE OFFICE OF ENERGY

When the Office of Energy was established (1 January 1995) it was agreed that DRD would provide a number of Corporate Services functions to that office utilising the existing staff and facilities of DRD. This was achieved without DRD increasing its resources nor incurring additional costs.

14.—ADDITIONAL PRODUCTIVITY INITIATIVES

(1) The following initiatives have improved productivity and performance in the Department.

(a) Introduction of online policy system.

A comprehensive database of Departmental policies and procedures has been implemented and has been successfully operating since early 1995. The system has been so successful that it was nominated for, and won, a Silver Medal at the Government Technology Productivity Awards in Canberra in 1995. These national awards recognise excellence in productivity improvement across both the State and Federal Public Sectors. The system was commended for being both comprehensive yet simple to use.

(b) Introduction of Accrual accounting

The introduction of accrual accounting into the Department is now complete and accrual accounts have been produced for the past two years. As a result, it is now possible to accurately reflect the true cost of services provided by the Department.

(c) Contracting out of Information Technology positions

Key positions within the Information Technology Branch have been contracted out and the services are now being supplied from the private sector. Whilst these arrangements have not resulted in a direct reduction of costs, these has been a significant increase in the level of service provided due to the flexibility of the arrangements and the expertise that can be provided by the contractors.

(d) Extensive Information Technology initiatives

The Department has undertaken a program of introducing new technology into the workplace. This strategy is in accordance with the Department's Information Technology Strategic Plan, which has as its basic tenet:

"To provide the appropriate information technology tools, training and support to enable the Department to carry out its role in the most efficient and effective way possible and enable Departmental staff to freely communicate, access and transfer information both within the organisation and with external organisations."

Access to information in an easy and timely manner is one of the key prerequisites to success in today's business environment. The information needs to be delivered to the individual's desktop in a manner that enables that individual to access the information without the need to have special skills nor extensive training.

Some of the initiatives in this area include:

(i) Templates for word processing of standard documents

In the word processing area, authors are now typing an increased proportion of their own work. The use of templates ensures compliance with Departmental standards and that the quality of the work produced is of a high standard. All staff now have the capacity to consistently produce work of a very high level.

(ii) Direct link to external databases

A direct link to the Department of Minerals and Energy's Minedex database which is saving Departmental officers considerable time by enabling them to inquire direct to the Database, rather than making verbal inquiries.

(iii) Direct access to corporate software

All staff now having access from their desktop to spreadsheet and presentation software, rather than having to share "pooled computers", as was previously the case.

(iv) Computerisation of all major projects into a database

All of the projects which are facilitated and monitored by the Department are recorded in a database that enables quick and easy monitoring of their status and progress to date. This database enables data on the projects to be extracted for a variety of purposes and has streamlines process significantly.

(v) New Records Management System

The Department has introduced a Records Management System that provides all staff with access to records information from their desktop. Queries that previously required telephone or direct contact with Records staff, can now be answered by the individual concerned without the need to go through an intermediary. This system has brought about significant efficiencies in the records area.

15.—PERFORMANCE MEASUREMENT MECHANISM

(1) The Department has developed a comprehensive Performance Measurement Mechanism based on thirty six Critical Success Factors (CSFs) that impact on overall Departmental performance. These CSFs are key areas of activity in which DRD must be successful in order to achieve its program outcomes.

(2) The system developed covers all critical areas of the Department and is clearly linked to the corporate, strategic and operational plans of the Department.

(3) The system enables a comprehensive representation of the various CSFs that relate to the Department's key outcomes and outputs to be separately measured and the results to be brought together to provide an overall view of the Department's performance. In total, there are 57 separate measures that are used in this process. When brought together, an overall assessment of the Department's performance can be made by way of an index. This index can also be used to monitor changes over time and determine corporate performance trends.

(4) The result obtained from this measurement process can lead to the payment of a performance based salary increase.

(5) The development of the process has been undertaken with the assistance of external consultants to ensure that it contains sufficient rigour to protect it from subjectivity and bias. A significant portion of the measures used rely on survey of clients and key stakeholders.

(6) At the end of the financial year, external consultants will undertake an assessment of the Department's performance, in accordance with the Performance Measurement Mechanism. All documentation associated with the process will be subject to scrutiny by the external consultants, and their recommendation will be submitted to the chief executive officer.

(7) If, in accordance with the Performance Measurement Mechanism, the performance of the Department is at a satisfactory level, the chief executive officer will approve a salary increase based on the scale which forms part of the model. Any increase in salary will be paid to all employees, and will date from 1 July 1997.

(8) A copy of the consultants report and details of the chief executive officer's decision will be forwarded to the CSCLR.

(9) All employees are required to commit to the successful introduction of this system.

16.—INVESTMENT IN EXCELLENCE PROGRAM

(1) The Department will be introducing the Investment in Excellence training program from August 1996. This program is focused on employees developing a greater belief in themselves and, as a result, producing a more flexible, innovative, focused and client orientated work force.

(2) All employees of the Department are required to take part in this program and to attend training sessions as scheduled by the Human Resource Branch. This will involve a minimum of three days in the first 12 months of the program.

17.—PERFORMANCE DEVELOPMENT SYSTEM

(1) The Department has a comprehensive Performance Development System that has been in operation for a number of years. However, it has previously lacked both management and staff commitment, resulting in a low participation rate. In the second quarter of 1996, it was decided to review the operation of that system and to introduce an improved system that ensures staff reach their full potential, optimise job satisfaction, enhance their range of skills and meet work targets.

(2) As a result of that review, a revised system is to be developed and introduced by the end of December 1996.

(3) Employees of the Department are required to fully participate in the revised system and to undertake the appropriate training before January 1997. All supervisors are required to fully implement the system within their work areas and all employees are required to ensure that scheduled planning interviews and feedback sessions are held.

18.—COMPETENCY APPROACH TO HUMAN RESOURCE MANAGEMENT

(1) The Department intends to base its internal human resource management processes on a competency approach. This will involve developing a framework of generic competencies, which will detail the necessary skills and knowledge staff require to perform the various Departmental roles.

(2) Employees of the Department are required to participate fully in the introduction of this system and to facilitate its introduction into the Department.

18A.—NO CHANGE TO CONDITIONS

The conditions of employment for persons employed, engaged under the Catering Employees and Tea Attendants (Government) Award, 1982 are not altered by this agreement.

19.—CONTRACT OF SERVICE

(1) Period of Probation

(a) Every new Level 1 employee appointed to the Department of Resources Development, unless being transferred from another Western Australian public sector agency, shall be on probation for a period of six months, unless otherwise determined by the chief executive officer.

(b) At any time during the period of probation the chief executive officer may annul the appointment and terminate the services of the employee by the giving of one weeks notice or payment in lieu thereof. The probationary employee may give one weeks notice of resignation.

(c) Prior to the expiry of the period of probation, the chief executive officer shall:

(i) have a report completed in respect to the employee's level of performance, efficiency, and conduct, and

(ii) annul the appointment, or

(iii) confirm the permanent appointment, or

(iv) extend the period of probation by up to six months, to a maximum period of probation of 12 months.

(2) Fixed Term Contract

The chief executive officer may engage employees on a fixed term contract of up to five years duration.

(3) Termination of Employment

(a) An employee shall give the chief executive officer written notice of intention to resign of not less than—

(i) one month, or

(ii) such other period as specified in the employee's contract of service, where applicable.

(b) An employee who fails to give the required written notice forfeits the sum of $250, unless agreement is reached between the employee and the chief executive officer for a shorter period of notice than that specified.

(4) Retirement

Every employee who has attained the age of 55 years shall be entitled to retire from the Department of Resources Development.

20.—HOURS OF WORK

(1) Employees classified Level 5 and below may elect to work either 40 hours per week or 37.5 hours per week.

(2) Employees wishing to change their choice of working hours during the term of this agreement must obtain the written approval of their Director, prior to negotiating a changeover date with the Human Resources Branch.

(3) Employees classified Level 6 and above are required to work the hours necessary to do their job and 40 hours per week is the minimum to be worked. In meeting the requirements of project facilitation and management, staff classified Level 6 and above are required to respond to the needs of resource developers and Departmental clients and stakeholders as and when those needs arise. Accordingly, it will not be unusual for staff to be required to undertake after hours and weekend work in excess of the minimum amount.

(4) Employees working a 40 hour week will receive additional salary as shown in column 2 of Schedule 1.

(5) Employees classified Level 5 and below are eligible, subject to agreement by their supervisor, to work flexitime as detailed in the Departmental "Hours of Duty" policy as amended from time to time.

(6) Employees classified Level 6 and above may not work a formal "flexitime" arrangement, but may have flexible starting and finishing times, to be negotiated with their supervisor.

21.—PART-TIME EMPLOYMENT

(1) All conditions of this agreement will apply to employees who are employed on a permanent basis to work less than the standard full time hours, except that entitlements will be on a proportional basis, based on the number of hours worked as a proportion of 37.5.

(2) Variations to part—time employment can be negotiated between the parties, however the chief executive officer has the right to specify changes to the number of hours worked, with 1 months notice.

22.—CASUAL EMPLOYMENT

(1) An employee may be engaged by the hour and paid a loading of 20% in addition to the normal hourly rate in lieu of annual leave, leave loading, sick leave and payment for public holidays. Casual employees are not entitled to payment of overtime rates.

(2) The employment of a casual employee may be terminated at any time, and for any reason, by the employee or the chief executive officer giving one hour's notice.

23.—ANNUAL INCREMENTS

An employee shall proceed to the maximum of the employee's salary range by annual increments in accordance with the following provisions:

(1) Before any increase in salary is paid to an employee, the officer in charge shall complete a report in respect of the employee's level of performance, efficiency and conduct and where the chief executive officer is satisfied with the report, the increase in salary shall be paid.

(2) Where the chief executive officer considers the report of the officer in charge to be an adverse report the following provisions shall apply:

(a) the report shall be brought to the notice of the employee and shall be initialled by the employee;

(b) the employee shall put any explanation or reasons for disagreeing with the report in writing;

(c) the chief executive officer shall immediately consider the report and the employee's explanation or the reasons and may approve the increase in salary or determine that the increase shall not be paid for a specific period.

(3) Where an increase is not paid for a specific period, the officer in charge shall complete a further report before the expiry of that specific period in accordance with the procedures outlined above.

(4) The non-payment of an increase will change the normal anniversary date of any further increase to 12 months after the last increase was approved.

24.—OVERTIME ALLOWANCE

(1) For the purposes of this Clause, the following terms shall have the following meanings:

"Overtime" means all work performed at the direction of the chief executive officer, outside the prescribed hours of duty.

"Prescribed hours of duty" means an employee's normal working hours as prescribed by the Chief Executive Officer in accordance with Clause 16 of the Public Service Award 1992.

"Public Holiday" means the days prescribed as Public Holidays in this agreement.

"Fortnightly salary" means an employee's substantive salary, exclusive of any allowances such as a special allowance, or higher duties allowance unless otherwise approved by the chief executive officer. Provided that a 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.

(2) Overtime

(a) An employee who works overtime for a greater period than 30 minutes, shall be entitled to payment or time off in lieu of payment, in accordance with this agreement, or any combination of payment or time off in lieu as approved by the chief executive officer.

(b) Payment for overtime and time off in lieu shall be calculated on an hourly basis in accordance with the following formula:

(i) Weekdays and Saturdays

(aa) For the first three hours worked outside the prescribed hours of duty on any one weekday or Saturday at the rate of time and one half;

(bb) After the first three hours on any one week day or Saturday at the rate of double time.

(ii) Sundays

For all hours on any Sunday, at the rate of double time.

(iii) Public Holidays

(aa) For hours worked during prescribed hours of duty on any Public Holiday at the rate of time and one half (in addition to the normal pay for that day);

(bb) For hours worked outside of the prescribed hours of duty on any Public Holiday at the rate of double time and a half.

(c) Payment for overtime shall not be approved for employees whose maximum salary or maximum salary and allowance in the nature of salary exceeds that as determined for Level 5.

25.—PAYROLL DEDUCTIONS

The chief executive officer will arrange for a payment from an employee's fortnightly salary to organisations where the employee completes an appropriate payroll deduction authority and such deductions can be processed electronically through the Department's payroll system.

26.—LEAVE WITHOUT PAY

(1) The chief executive officer may grant an employee leave without pay for any period up to a maximum of 3 years if the following conditions are met:

(a) The work of the Department is not inconvenienced; and

(b) All leave credits of the employee are exhausted.

(2) Leave Without Pay shall not count as qualifying service for any other purpose.

27.—STUDY LEAVE

The chief executive officer may approve time off for the purposes of employees undertaking study or attending examinations.

28.—JURY DUTY

The chief executive officer shall grant an employee leave of absence on full pay to enable the employee to carry out duties as a juror.

An officer granted leave of absence on full pay to carry out duties as a juror is not entitled to retain any juror's fees that may be payable.

29.—HIGHER DUTIES ALLOWANCE

(1) Where an employee is directed to act in an office which has a higher salary range than the employee's substantive position and performs the full duties and accepts the full responsibility of the higher position for a continuous period of ten (10) consecutive working days or more, the employee shall be paid an allowance, for that period in excess of 10 days, equal to the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to that position. This provision means that the first 10 days of any period of higher duties are not paid at the higher rate.

(2) Where the full duties of a higher office are temporarily performed by two (2) or more employees, or when an employee is acting in a higher position but is not carrying out the full duties of the position, the amount of the allowance to be paid will be determined by the chief executive officer.

(3) Where an employee, who is in receipt of a higher duties allowance and has been so for a continuous period of twelve (12) months or more, proceeds on a period of approved leave of absence of not more than four (4) weeks, the employee shall continue to receive the allowance for the period of leave.

30.—ANNUAL LEAVE

(1) Definitions:

"Accrued leave"—is the leave an employee is entitled to from previous calendar years.

"Pro-rata 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.

(2) Each employee is entitled to four weeks paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.

An employee who commences with the Department of Resources Development after 1 January in any year is entitled to pro-rata annual leave for that year.

(3) 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 the approval of the chief executive officer.

(4) 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, 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) The chief executive officer may direct an employee to take accrued annual leave and may determine the date on which such leave shall commence.

(6) An employee may apply to receive payment for annual leave, accrued up until 31 December 1995, rather than take the leave as time off work. In such circumstances, the amount of payment will be the dollar value of the leave had it been taken at the time payment is received. Approval for payment will be granted by the chief executive officer, based on the financial capacity of the Department to fund the payment.

(7) Application to receive payment for annual leave must be made in writing to the chief executive officer, and once made cannot be revoked.

(8) Annual leave loading, as prescribed in clause 19 (11) of the parent award, shall not apply under this agreement.

31.—LONG SERVICE LEAVE

(1) Employees may elect to receive long service leave entitlements at either the completion of each 7 years, or each 10 years, of continuous services.

(2) Employees wishing to change their choice of long service leave entitlement during the term of this agreement must

obtain the written approval of their Director, prior to negotiating a changeover date with the Human Resources Branch.

(3) Employees electing to receive long service leave entitlements on the completion of 10 years continuous service will receive additional salary as shown in column 4 of Schedule 1.

(4) Each employee is entitled to 13 weeks paid long service leave on full pay or 26 weeks on half pay, or a combination thereof, at the completion of each period of nominated continuous service. Leave may be taken in periods as approved subject to a minimum of 2 weeks leave at any time.

(5) Continuous service does not include any period during which the employee is absent on leave without pay, maternity leave, parental leave, workers compensation or any period where an employee is taking long service leave nor any period that was taken into account in calculating a payment in lieu of long service leave.

(6) The chief executive officer 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.

(7) An employee may apply to receive payment for accrued long service leave rather than take the leave as time off work. In such circumstances, the amount of payment will be the dollar value of the leave had it been taken at the time payment is received. Approval for payment will be granted by the chief executive officer, based on the financial capacity of the Department to fund the payment.

(8) Application to receive payment for long service leave must be made in writing to the chief executive officer, and once made cannot be revoked.

32.—SICK LEAVE

(1) The chief executive officer shall credit each employee with the following sick leave credits, which shall be cumulative:

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

except that employees who commence with the Department and transfer in existing sick leave credits, will retain their original anniversary date for crediting sick leave.

(2) Medical Certificate

(a) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, if appropriate, a registered dentist.

(b) The amount of sick leave granted without the production of a medical certificate, or because of the illness of an immediate family member, shall not exceed, in the aggregate, 5 working days in any one credit year.

(3) An employee, subject to having sufficient credits, shall be entitled to take up to 5 days sick leave, per credit year, when an immediate family member is ill. In such cases, an application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, if appropriate, a registered dentist. An immediate family member in this instance includes spouse, defacto spouse, child or stepchild, parent, step parent or a family member who lives with the employee.

(4) Where the chief executive officer has reason to doubt the cause of the illness or the reason for the absence, the chief executive officer may take steps to resolve the matter.

(5) Where an employee is ill during a period of annual leave and produces medical evidence to the satisfaction of the chief executive officer that as a result of the illness the employee was confined to his/her place of residence or a hospital for a period of at least seven consecutive calendar days, the chief executive officer may grant sick leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

(6) Where an employee is ill during a period of long service leave and produces medical evidence to the satisfaction of the chief executive officer that as a result of illness the employee was confined to his/her place of residence or a hospital for a period of at least 14 consecutive calendar days, the chief executive officer 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.

(7) 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.

33.—SHORT LEAVE

(1) The chief executive officer may, upon sufficient cause being shown, grant an employee short leave on full pay not exceeding 2 consecutive working days, but any leave granted under the provisions of this cause shall not exceed, in the aggregate, 3 working days in any one calendar year.

(2) Employees may elect to forfeit their entitlements to short leave, and in doing so will receive additional salary as shown in column 3 of Schedule 1. If an employee elects to forfeit short leave, that election cannot be changed during the term of this agreement

34.—BEREAVEMENT LEAVE

Employees are entitled to 2 days bereavement leave which may be taken on the death of an immediate family member. An immediate family member in this instance means spouse, defacto spouse, child or stepchild, parent, sibling, step parent or a family member (who lived with the employee).

35.—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 chief executive officer may approve another day to be taken as a holiday in lieu of any of the above mentioned days.

(2) When any of the days mentioned above falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

(3) When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday.

(4) 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.

(5) An employee may elect to take the Public Service holiday on Easter Tuesday and the additional Public Service holiday as substitute days during the Christmas shutdown or to forfeit the holidays and receive additional salary as shown in column 5 of Schedule 1. If an employee elects to forfeit short leave, that election cannot be changed during the term of this agreement.

36.—TRAVELLING ALLOWANCE

An employee who undertakes approved travel on official business shall be reimbursed on the following basis—

(1) When a trip necessitates an overnight stay away from headquarters and accommodation only is provided at no charge to the employee, or when an employee travels to a place outside a radius of fifty (50) kilometres measured from the employee's headquarters, and the trip does not involve an overnight stay away from headquarters, reimbursement for meals shall be on the following basis, subject to the employee's certification that each meal claimed was actually purchased:

WA—South of 26 South Latitude:

Breakfast	$9.80
Lunch	$9.80
Dinner	$24.00

WA—North of 26 South Latitude:

Breakfast	$10.40
Lunch	$15.00
Dinner	$23.90

Interstate:

Breakfast	$10.40
Lunch	$15.00
Dinner	$23.90

(2) When a trip necessitates an overnight stay away from headquarters and the employee is fully responsible for his or her own accommodation, meals and incidental expenses—

(a) where hotel or motel accommodation is utilised reimbursement shall be on the following basis:

WA—Metropolitan Hotel or Motel	$144.85
Locality South of 26 South Latitude	$103.05
Locality North of 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 Capitals	$147.80
Interstate—Other than Capital City	$103.05

(b) where other than hotel or motel accommodation is utilised reimbursement shall be on the following basis:

WA—South of 26 South Latitude	$50.70
WA—North of 26 South Latitude	$58.50
Interstate	$58.50

(3) To calculate reimbursement for a part of a day, the following formula shall apply—

if departure from headquarters is:

before 8.00 am—100% of the 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.

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 it can be shown to the satisfaction of the chief executive officer, by the production of receipts, that reimbursement, in accordance with this agreement, does not cover an employee's reasonable expenses for a whole trip, the employee shall be reimbursed the excess expenditure.

(5) In addition to the rates paid under this agreement, 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.

(6) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided sick leave is approved in accordance with provisions of this agreement and the employee continues to incur accommodation, meal and incidental expenses.

37.—PARTIAL SHUTDOWN AT CHRISTMAS

The Department will be staffed by a limited number of employees over the Christmas and New Year public holiday period.

Unless otherwise provided, employees will be required to take leave during this period. The chief executive officer shall, as soon as possible in the new calendar year, advise employees of the period of the partial close down and the number of working days involved.

The period of the partial close down will be at the discretion of the chief executive officer but will not be in excess of 5 working days. The working days involved shall be taken by the employees as days in lieu of Public Holidays or annual leave.

When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory partial close down period.

New employees, employees who have exhausted their annual leave credits at the commencement of this agreement, or employees who have been granted approval to utilise all leave credits shall be entitled to go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

38.—SALARIES

(1) As a result of the past productivity initiatives detailed in this agreement, employees will receive a payment of 3% from the commencement of this agreement.

(2) Employees will also receive a payment of 3%, carried over from the 1995 Workplace Agreement or the 1995 Enterprise Bargaining Agreement which will date from the commencement of this agreement.

(3) As a result of supporting the introduction and development of the Performance Measurement Mechanism, employees will receive an immediate payment of 1%. A progress payment of 2% for implementation of the management and data collection systems required by the Performance Measurement Mechanism will be paid from 1 February 1997. This payment will be subject to the successful implementation of such systems and will require the approval of the CSCLR.

(4) A performance payment may be made, effective from 1 July 1997, in accordance with the details outlined in the above section titled Performance Measurement Mechanism. Any such payment will be discounted by 3% to account for the 3% implementation payments made immediately (1%) and 1 February 1997 (2%) and will require the approval of the CSCLR.

39.—COPIES OF AGREEMENT

Every party to this agreement and each employee covered by this agreement shall receive a copy of the agreement, upon request.

40.—DISPUTE RESOLUTION

In keeping with the spirit of this agreement the parties are committed to the principle of conciliation and direct negotiation in any issues or disputes arising out of this agreement. Any issues or disputes should, if possible, be resolved promptly by direct informal consultation between the parties involved. In the event that the issues or disputes cannot be resolved informally the following processes shall apply:

STAGE 1.

Discussion between the employee and their immediate supervisor.

STAGE 2.

Discussion between the employee, their immediate supervisor and the Branch/Division Manager.

STAGE 3.

Discussion between the employee, his/her immediate supervisor, and/or Branch/Division Manager and the chief executive officer (in person) or the person acting in the position of chief executive officer (in person).

STAGE 4.

If a dispute has not been resolved within 10 days under Stages 1—3 the dispute must be put in writing to the Director, Corporate Services. The Director or his/her delegate, shall be required to convene a meeting of relevant parties to the dispute in an attempt to arrive at a satisfactory resolution. If no resolution can be reached within 5 days the matter may be referred by either party to the Industrial Commission.

Nothing in this agreement prohibits a party with a dispute from proceeding to a subsequent Stage if s/he does not wish to raise the matter with the employee/s concerned.

SIGNATURES OF THE PARTIES TO THIS AGREEMENT

The following signatories are authorised to sign this agreement on behalf of the respective organisations party to this agreement

.....*Signed*..... Date: 16 December 1996

D R KELLY
CHIEF EXECUTIVE OFFICER
DEPARTMENT OF RESOURCES DEVELOPMENT

.....*Signed*. ..... Date: 30 January 1997

D ROBINSON
BRANCH SECRETARY
CIVIL SERVICE ASSOCIATION OF WA INC

.....*Signed*. ..... Date: 29 January 1997

E FRY
SECRETARY
FEDERATED LIQUOR AND ALLIED INDUSTRIES EMPLOYEES UNION OF AUSTRALIA
WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS

SCHEDULE 1

	LEVEL	Column 1	Column 1A Potential 2% effective 1/2/97	Column 2 40 hour week	Column 3 Short Leave	Column 4 LSL 10 years	Column 5 Pub. Hols
LEVEL 1	U/17 yrs	11641	11873	728	49	138	98
	17 yrs	13604	13876	851	57	161	114
	18 yrs	15868	16186	993	67	188	133
	19 yrs	18368	18736	1150	77	218	154
	20 yrs	20627	21040	1291	87	245	173
	21/1st yr	22659	23112	1418	95	269	190
	22/2nd yr	23357	23824	1462	98	277	196
	23/3rd yr	24054	24535	1505	101	285	202
	24/4th yr	24747	25242	1549	104	294	208
	25/5th yr	25444	25953	1592	107	302	214
	26/6th yr	26141	26664	1636	110	310	220
	27/7th yr	26943	27482	1686	113	320	226
	28/8th yr	27497	28047	1721	116	326	231
	29/9th yr	28317	28884	1772	119	336	238
LEVEL 2	1st yr	29299	29885	1834	123	348	246
	2nd yr	30052	30653	1881	126	356	253
	3rd yr	30843	31460	1930	130	366	259
	4th yr	31679	32313	1983	133	376	266
	5th yr	32554	33205	2037	137	386	274
LEVEL 3	1st yr	33756	34431	2113	142	400	284
	2nd yr	34693	35387	2171	146	412	292
	3rd yr	35658	36372	2232	150	423	300
	4th yr	36650	37383	2294	154	435	308
LEVEL 4	1st yr	38010	38770	2379	160	451	320
	2nd yr	39075	39856	2445	164	464	328
	3rd yr	40171	40974	2514	169	477	338
LEVEL 5	1st yr	42282	43128	2646	178	502	355
	2nd yr	43709	44584	2735	184	519	367
	3rd yr	45192	46096	2828	190	536	380
	4th yr	46731	47665	2924	196	554	393
LEVEL 6	1st yr	49205	50189	3079	207	584	414
	2nd yr	50887	51904	3185	214	604	428
	3rd yr	52627	53680	3294	221	624	442
	4th yr	54486	55576	3410	229	646	458
LEVEL 7	1st yr	57336	58483	3588	241	680	482
	2nd yr	59308	60494	3712	249	704	499
	3rd yr	61454	62683	3846	258	729	517
LEVEL 8	1st yr	64940	66239	4064	273	770	546
	2nd yr	67438	68787	4220	283	800	567
	3rd yr	70535	71946	4414	296	837	593
LEVEL 9	1st yr	74403	75892	4656	313	883	625
	2nd yr	77017	78557	4820	324	914	647
	3rd yr	79997	81597	5006	336	949	672
CLASS 1		84505	86195	5288	355	1002	710
CLASS 2		89012	90792	5571	374	1056	748
CLASS 3		93517	95387	5852	393	1109	786
CLASS 4		98024	99985	6135	412	1163	824

Specified Callings

Employees who possess a relevant tertiary level qualification and who are employed in the callings of Librarian (level 2/4) or Environmental Officer (level 5) shall be entitled to annual salaries as detailed below:

Level 2/4	1st yr	29299	29885	1834	123	348	246
	2nd yr	30843	31460	1930	130	366	259
	3rd yr	32554	33205	2037	137	386	274
	4th yr	34693	35387	2171	146	412	292
	5th yr	38010	35387	2379	160	451	320
	6th yr	40171	40974	2514	169	477	338
Level 5	1st yr	43709	43128	2646	178	502	355
	2nd yr	43709	44584	2735	184	519	367
	3rd yr	45192	46096	2828	190	536	380
	4th yr	46731	47665	2924	196	554	393

SCHEDULE 2

CATERING EMPLOYEES AND TEA ATTENDANTS (Government) AWARD 1982

Tea Attendants

Base Full Time Salary (per week)

$317.40

In addition to the above wage rates, service pay will be paid for each year of service at the following rates per week:

$53.07	1st yr.
$57.98	2nd yr.
$62.24	3rd yr.

Staff employed on a part-time basis under the Catering, Employees and Tea Attendants (Government) Award 1982 shall continue to receive an additional 15% on top of their weekly pay as provided in their Award.

EVERETT-SMITH & CO ENTERPRISE BARGAINING AGREEMENT
No. AG 6 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Everett-Smith & Co Pty Ltd

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

No. AG 6 of 1997.

Everett-Smith & Co Enterprise Bargaining Agreement

SENIOR COMMISSIONER G.L. FIELDING

21 February 1997.

Order.

HAVING heard Ms V. Paul 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 15th day of January, 1997 entitled Everett-Smith & Co Enterprise Bargaining Agreement be registered as an industrial agreement and shall replace the Everett-Smith & Co Enterprise Bargaining Agreement No. AG 133 of 1995.

(Sgd.) G. L. FIELDING,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This agreement will be known as the Everett-Smith & Co Enterprise Bargaining Agreement and will replace registered industrial agreement AG133 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Area and Scope
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. Severance
14. Journey Cover
15. Monitoring of Agreement
16. Wages
17. Date and Signatures

3.—PARTIES BOUND

This agreement is made between Everett-Smith & Co Pty Ltd (**ESCO**) 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 ESCO, its employees who are members or eligible to be members of the Union employed in the classifications set out in clause 16 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 the Agreement upon registration is 55.

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 clause 6.

6.—APPLICATION OF AGREEMENT

(1) Specific Sites and Projects

(a) Where the parties to this agreement are also parties to a written 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) This agreement shall not apply to certain contracts entered into by ESCO as determined from time to time and agreed to by the parties to this agreement.

(d) Where a specific project or site agreement is applicable to work undertaken by ESCO 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.

(e) Where a specific project or site agreement is applicable to work ESCO are contracted to carry out, and ESCO and the Union is 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.

(f) 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.

(g) 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.

(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 16—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 ESCO and its employees at a competitive disadvantage, and/or productivity and flexibility have not improved then ESCO has the option of reverting to work under the Electrical Contracting Industry Award R22 of 1978 (**Award**).

(4) No part of this agreement shall be used by the Union, ESCO, 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 shall be otherwise used by the Union, ESCO, or its employees as evidence or example before any industrial tribunal or any other electrical contractor.

(6) Pursuant to this agreement and its measures to achieve gains in productivity, efficiency and flexibility, ESCO shall provide the rates of pay prescribed in clause 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 Award. Where any inconsistency exists between this agreement and the Award, this agreement will take precedence to the extent of the inconsistency.

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 adjustment 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, ESCO 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 ESCO's operations;

(b) encouraging ESCO'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 ESCO and the union on ESCO's work sites.

(i) enhancing job satisfaction;

(j) improving ESCO'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

(1) The Union undertakes to comply with the procedures contained in Clause 27—Grievance Procedure and Special Allowance of the Award without exception when any question, dispute or difficulty arises between the Union and ESCO in relation to the Award or this Agreement.

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 ESCO and its employees.

(2) A Consultative Committee (**Committee**) may be established within ESCO. The composition and size of Committee shall be determined by the parties.

(3) The Committee will initially be chaired by ESCO's State Manager 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 ESCO 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 training;

(d) the productivity improvement programme;

(e) communication between ESCO 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 ESCO.

(6) At the expiration of this agreement the Committee shall disband.

11.—TRAINING

(1) Training Generally

(a) ESCO 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 ESCO at the forefront of the industry.

(b) The parties to this agreement recognise that in order to increase the efficiency, productivity and competitiveness of ESCO, a commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(i) developing a more highly skilled and flexible workforce; and

(ii) providing employees with career opportunities through appropriate training to acquire the additional skills as required by ESCO.

(c) It is agreed that a training programme be developed consistent with:

(i) the current and future skill needs of ESCO;

(ii) the size, structure and nature of ESCO;

(iii) the need to develop vocational skills relevant to ESCO and the electrical contracting industry.

(2) Trade Union Training

(a) An accredited shop steward or other employee nominated by the Union will be released from duty by ESCO without loss of pay to attend a Trade Union Training Authority course for a maximum of 4 days in any one year

(b) ESCO is not obliged to release an employee from duty in accordance with subclause 11(2)(a) above unless:

(i) the Union gives ESCO reasonable notice in writing of the intended course, such reasonable notice being not less than 2 weeks;

(ii) in relation to an employee who is not a shop steward, ESCO considers the course will benefit such employee and agrees to release him/her accordingly.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for ESCO 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 RDO's

(a) It is agreed that employees will be flexible in the following areas:

(i) where it is agreed between ESCO and the majority of affected employee(s) ESCO may reschedule ordinary working hours;

(ii) the spread of hours may be altered by agreement between ESCO and the majority of employees in the plant or section(s) concerned;

(iii) agreement to reschedule ordinary working hours and to alter the spread of hours shall 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 ESCO 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 ESCO wish to reschedule an RDO, ESCO will endeavour to provide reasonable notice to the employee(s). RDO's 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 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 ESCO. ESCO 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) ESCO will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at ESCO's discretion, provided that this will not disadvantage ESCO in any way.

(d) In conjunction with the roster system ESCO will select the employees required to work overtime according to the needs of ESCO 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 ESCO, as soon as possible prior to overtime commencement of that fact and the reasons therefore, 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 ESCO 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 reissue of footwear where an employee is placed on a new site.

(7) Uniforms and Clothing

(a) ESCO agrees to provide each employee with:

one pair boots

one winter jacket

suitable seasonal shirts

(b) It is agreed that employees issued with ESCO uniforms and clothing, in accordance with company policy as amended from time to time, shall wear such items during all work hours and each employee shall maintain his/her uniform/clothing in a respectable condition as approved by ESCO.

(c) 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 ESCO Property

(a) It is agreed that employees will treat all property, plant and equipment owned or hired by ESCO 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 ESCO 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.

(9) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of ESCO 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.

(10) Quality Management

It is agreed that employees shall co-operate fully with the development and implementation of ESCO quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by ESCO. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(11) 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) 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.

(12) Use of Expertise and Duties

(a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate license to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licenses when required to by ESCO.

(b) Employees' duties shall include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.

(c) The parties shall use their best endeavours to avoid demarcation disputes.

(13) Qualified Personnel

Leading Hands are able to work on the tools until the administrative requirements of the project is such that this is not practical.

(14) Rest Period

(a) A rest period of 10 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 10 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 ESCO.

(c) Smoking is not permitted in ESCO offices, including site offices, toilet facilities, lunchrooms, motor vehicles and other ESCO facilities.

(15) Unauthorised Absences

(a) ESCO 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) ESCO 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) the Award provisions; or

(ii) an instruction from ESCO that the employee may leave site without loss of pay.

(16) Safety Disputes

(a) Where an ESCO employee is affected by a safety dispute an employee shall comply with ESCO 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 ESCO instructions shall forfeit wages for time not worked.

(17)(a) Inclement Weather (Wet)

(i) Where an ESCO employee is affected by inclement wet weather, the employee will remain on site and continue work as normal, provided that the area in which the employee is working is not affected by the inclement weather, that the amenities are accessible and there is first aid and occupational safety and health coverage on site.

(b) Inclement Weather (Hot)

(i) Where an ESCO employee is affected by inclement hot weather being whether at a certain temperature agreed by the parties, then the following procedures will apply:

(i) where an employee is working in an area or external area which is effected by the inclement hot weather, they may be allowed to leave the site without loss of pay;

(ii) where an employee is carrying out work in an airconditioned area, say will remain at the site and continue working;

(iii) where the area in which the employee is working is artificially cooled, the employee will remain on site and carry on working;

(iv) where the site has a mixture of hot and cool areas, those employees working in the areas affected by the inclement hot weather can elect a transfer to a cooler area and remain at work.

(c) An employee will not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and is not safe for work to continue.

(d) An employee fails to comply with this subclause, agrees to forfeit wages for time not worked.

(18) All Other Disputes

(a) Where an ESCO employee is affected by any other dispute an employee shall comply with ESCO 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 ESCO instructions shall forfeit wages for time not worked.

(19) 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.

(20) New Technology

It is agreed that employees will fully utilise all new technological advances implemented by ESCO including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

(21) 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.

(22) 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 ESCO 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) ESCO 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.

(23) Commissioning Allowance

A tradesperson will not receive a commissioning allowance for miscellaneous pre-commissioning. A tradesperson shall not receive a commissioning allowance unless that tradesperson is appointed by ESCO to the position of a commissioning tradesperson for a defined period.

(24) Provision of Safety Personnel

In the commercial sector of ESCO's operations, ESCO will endeavour to provide appropriately trained safety personnel to attend on site where, as a result of a dispute, ESCO's employees are unable to continue work due to the absence of appropriately trained safety personnel.

(25) First Aid Training

The parties are committed to improving the safety of personnel by ensuring adequate employees are competently trained in an approved basic first aid course.

13.—SEVERANCE

ESCO agrees to increase contributions towards the severance scheme facility administered by the ECA to $50.00 per week for each eligible employee of ESCO, effective from February 1996.

14.—JOURNEY COVER

ESCO agrees to provide journey cover for each employee travelling to and from work, only where such travel is not covered under the relevant workers' compensation legislation.

15.—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.

16.—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 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 or after ..1.../..7../97
Electrical Installer	$542.43	$562.77	$583.87	$605.77
Electrical Fitter	$542.43	$562.77	$583.87	$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 14(1) above.

(3) The above weekly wage rates are paid in lieu of the rate of wages and safety net adjustment payment pursuant to subclause 2 of the First Schedule—Wages, of the Award, and are exclusive of allowances and other special payments payable pursuant to the Award.

17.—DATE AND SIGNATURES

FOR AND ON BEHALF OF EVERETT-SMITH & CO PTY LTD

Y.E. Smith (Signed)	Terry Long (Signed)
SIGNED	WITNESSED
Manager	
TITLE	
24/12/96	
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:

Les McLaughlan (Signed)	P.Carter (Signed)
SIGNED	WITNESSED
Organiser	Affix Seal
TITLE	**COMMON SEAL**
19.12.96	
DATE	

FORRESTFIELD CBH GRAIN SILO CONSTRUCTION PROJECT AGREEMENT 1996 No. AG 328 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transfield Construction Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union Of Workers—Western Australian Branch & Others.

No. AG 328 of 1996.

Forrestfield CBH Grain Silo Construction Project Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

12 February 1997.

Order.

HAVING heard Mr K.J. Dwyer on behalf of the Applicant and Mr G.C. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 5th day of December, 1996 entitled Forrestfield CBH Grain Silo Construction Project Agreement 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Forrestfield CBH Grain Silo Construction Project Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. General Conditions of Employment
5. Intent
6. Safety Footwear/Clothing
7. Site Allowance
8. Special Productivity Payment
9. Improvement Measures
10. Project Entry Requirements
11. Workforce Meetings
12. Superannuation
13. Resolution of Disputes
14. Wage Rates
15. Journey Cover
16. No Extra Claims
17. Term
18. Signatories to Agreement

3.—AREA AND SCOPE

This Agreement shall apply to Transfield Construction Pty Ltd and 32 of its employees, who are employed on the construction of the CBH Grain Silos at Forrestfield, and are members or eligible to be members of the unions listed hereunder, and are bound by the following Awards and to the Unions listed hereunder—

Awards

Metal Trades (General) Award 1966 Part II No. 13 of 1965

Engine Drivers (Building and Steel) Construction Award No. 20 of 1973

Building Trades (Construction) Award

Electrical Contracting Industry Award R22 of 1978

Unions

Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers—Western Australian Branch.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Western Australian Branch.

Construction, Mining, Energy Timberyards, Sawmills and Woodworkers Union of Australia—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.

Further, the Employer will not engage in flat payments or such other arrangements which do not provide conditions of employment equal to the relevant award and this agreement.

5.—INTENT

This Agreement is designed to enable employers, employees and their union(s) to co-operate with the objective of ensuring a successful and timely completion of the project.

All parties are committed to:

- providing high standards of occupational health and safety on the site;
- promoting the concept of adaptable, committed, versatile, highly skilled employees;
- increasing job satisfaction for all project personnel;
- eliminating industrial relations lost time by the resolution of conflicts in accordance with agreed procedures;
- achieving a productive and efficient working environment on the project;
- facilitating a co-operative approach to employment relationships;
- taking steps to improve and enhance communication between employees and management/supervisors.

6.—SAFETY FOOTWEAR/CLOTHING

(1) Each employee upon commencement of employment with the named signatories to the Agreement shall be provided with one pair of safety boots free of charge.

(2) Each employee shall be paid a flat allowance of six cents per hour, for each hour worked to compensate the employee for the requirement to wear safety footwear (boots) and to permit the employee to replace their safety footwear (boots) as required.

(3) All new employees on the project shall be supplied with 2 sets of clothing as soon as is practicable after their commencement on the project, unless the employer has previously issued such clothing and that clothing is in good condition.

(4) Each employee on the project who has been employed for a continuous period of two weeks between the period 1 May and 1 October shall be supplied with one bluey jacket.

7.—SITE ALLOWANCE

A site allowance of $2.40 per hour for each hour worked shall be paid in recognition of the disabilities associated in carrying out construction on commissioning work on the site and such payment shall be in lieu of all prescribed disability allowances in the named Awards.

8.—SPECIAL PRODUCTIVITY PAYMENT

In keeping with the intent of this Agreement, each employee shall accrue a payment of $50.00 per week. This payment shall not accrue in any week in which the employee is involved in or engages in industrial action, bans or limitations.

The accrual of the payment shall not be affected where the employee attends a meeting authorised in advance by the project management.

9.—IMPROVEMENT MEASURES

In order to achieve the main aims of improved productivity, efficiency and flexibility, the following measures will be implemented.

(1) Occupational Health & Safety—Improved safety procedures and the monitoring of methods will reduce durations of time lost through injury. With the co-operation of all concerned and a determined commitment from management gains will be made in this area.

(2) Self-supervision—In keeping with the overall aims and objectives of this Agreement, and as a reflection of the company's faith in the ability and dedication of its employees, it is a further aim of this Agreement to promote the concept of self-supervision within its workforce on the project.

Employees are to be encouraged to use their initiative and self-discipline to ensure that their work is completed without excessive supervision. Employees shall also be encouraged to contribute ideas for productivity and efficiency enhancements.

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 success of this project and for optimal job satisfaction and personal development.

(3) The company reserves the right to determine the selection of employees when there is a requirement to reduce the workforce. The primary consideration for retention will be skill and competence. However, should the skill and competence of individuals within the various classifications be of equal standing, length of service will be used to determine the priority for termination.

10.—PROJECT ENTRY REQUIREMENTS

(1) To reinforce a safe site policy, access to the project will be restricted.

(2) Any official of a union party to this Agreement shall where practicable give site management appropriate notice of their intention to visit the project. On arrival at the project work site the visiting official(s) shall first call at the site office and introduce themselves to site management prior to pursuing any bona fide union duties on site.

(3) Union official(s) shall produce their union accreditation in accordance with the relevant award and observe the safety provisions for entry to the site.

11.—WORKFORCE MEETINGS

Where practicable twenty-four (24) hours notice of union workforce meetings shall be given to the employer by the relevant full-time union official. Where such meetings are convened to discuss union matters or other issues they shall occur at the most convenient time for programming of work, i.e. prior to commencement of work, shift breaks, lunch time or smoko, etc.

12.—SUPERANNUATION

The respondents to this Agreement undertake to make contributions to an appropriate occupational superannuation fund which meets the approved standards at the prevailing rate for the engineering construction industry.

13.—RESOLUTION OF DISPUTES

The parties to this Agreement undertake to eliminate industrial disputation by strict adherence to the following procedure:

(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 dispute 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 grievance or dispute.

(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.

14.—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	Rate Per Week From Commencement of Project $	Rate Per Week From 1.8.96 $	Rate Per Week From 1.12.96 $	Rate Per Week From 1.4.97 $
Welder—Special Class	576.40	590.81	611.49	629.83
Welder	566.54	580.70	601.02	619.05
Boilermaker	566.54	580.70	601.02	619.05
Pipe Fitter	566.54	580.70	601.02	619.05
Certificated Rigger or Scaffolder	539.22	552.14	571.46	588.60
Rigger or Scaffolder—Other	519.45	532.44	551.08	567.61
Tradesmen—the greater part of whose time is occupied in marking off and/or template making	571.40	585.70	606.20	624.40
Tradesman	566.54	580.70	601.02	619.05
Tradesperson's Assistant	487.08	499.26	516.73	532.23

Classification	Rate Per Week From Commencement of Project $	Rate Per Week From 1.8.96 $	Rate Per Week From 1.12.96 $	Rate Per Week From 1.4.97 $
Tradesperson's Assistant—who from time to time uses a grinding machine	490.56	502.82	520.42	536.03
Crane Attendant and Dogperson	519.45	532.44	557.08	567.61
Labourer	462.96	474.53	491.14	505.87

Note 1: 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	Rate Per Week From Commencement of Project $	Rate Per Week From 1.8.96 $	Rate Per Week From 1.12.96 $	Rate Per Week From 1.4.97 $
Mobile Crane Operators				
- up to 8 tonnes	534.86	547.62	565.94	582.18
- 8 to 15 tonnes	546.83	559.89	578.63	595.26
- 15 to 40 tonnes	557.00	570.32	589.42	606.37
- 40 to 80 tonnes	565.02	578.53	597.93	615.14
- 80 to 100 tonnes	571.12	584.79	604.41	621.81
- 100 to 140 tonnes	580.22	594.11	614.06	631.75
- 140 to 180 tonnes	592.19	606.38	626.75	644.81
- 180 to 220 tonnes	608.23	622.82	643.77	662.35
- Over 220 tonnes	629.05	644.17	665.85	685.09

Note: The above "EBA Rate Per Week" contains all relevant Award provisions.

(3) Wage Rates for Classifications—Building Trades Construction.

Classification	Rate Per Hour From Commencement of Project $	Rate Per Hour From 1.8.96 $	Rate Per Hour From 1.12.96 $	Rate Per Hour From 1.4.97 $
Carpenter Joiner Stonemason Stoneworker	14.78	15.12	15.61	16.05
Bricklayer	14.64	14.98	15.47	15.91
Labourers				
Group 1	14.19	14.53	15.02	15.45
Group 2'	13.71	14.03	14.50	14.92
Group 3	13.34	13.65	14.11	14.52
Group 4	12.44	12.74	13.16	13.54

(4) Wage Rates for Classifications—Electrical Contracting Industry Award.

Classification	Rate Per Week From Commencement of Project $	Rate Per Week From 1.8.96 $	Rate Per Week From 1.12.96 $	Rate Per Week From 1.4.97 $
Level 1				
Electronics Tradesman	690.55	707.81	732.58	754.56
Level 2				
Electrician—Special Class	622.80	638.37	660.71	680.53
Instrument Fitter/Electrical Grade 2	631.74	647.53	670.19	690.30
Level 3				
Electrical Installer	594.73	609.60	630.94	649.86
Electrical Fitter	594.73	609.60	630.94	649.86
Level 5				
Electrical Assistant	510.52	523.28	541.59	557.84

NOTE: The above "EBA Rate per Week" excludes award provisions relating to Grievance procedure and Special Allowance, Licence Allowance and Tool Allowance.

15.—JOURNEY COVER INSURANCE

As a term of this agreement, employees employed pursuant to this agreement shall be provided with Journey Cover Insurance at no cost to themselves.

16.—NO EXTRA CLAIMS

A condition of this Agreement is that the Unions on the project will make no further claims on the employers respondent to this Agreement over conditions set out in this Agreement for the life of the construction phase of the project.

The union reserves its rights for unforeseen or exceptional circumstances that impacts on employees wages and conditions to raise such matters and if such matters are still in dispute may use the Western Australian Industrial Relations Commission to have the matter(s) arbitrated.

17.—TERM

This Agreement shall have effect from the date of commencement of work on site and shall remain in force until practical completion of the Project.

18.—SIGNATORIES

Transfield Construction Pty Ltd	indecipherable (Signed)
Date	2/12/96
Witness	indecipherable (Signed)
Date	2/12/96
The Automotive, Food, Metals, Engineering Printing and Kindred Industries Union of Workers—Western Australian Branch	J Sharp-Collett (Signed)
Date	20/11/96
Witness	
Date	
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia —WA Branch	P. Carter (Signed)
Date	29/11/96
Witness	L. McLaughlin (Signed)
Date	29/11/96
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—WA Branch	J. McDonald (Signed)
Date	2/12/96
Witness	indecipherable (Signed)
Date	2/12/96

GORDON & GOTCH LIMITED ENTERPRISE BARGAINING AGREEMENT 1997
No. AG 43 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and
Allied Employees' Association
of Western Australia

and

Gordon & Gotch Ltd.

No. AG 43 of 1997.

COMMISSIONER J.F. GREGOR.

7 March 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 43 OF 1997.

HAVING heard Ms K Cameron on behalf of the first named party and no appearance (by prior arrangement) 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 Gordon & Gotch Limited Enterprise Bargaining Agreement 1997, filed in the Commission on 3 February 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

1.—TITLE

This Agreement shall be known as the "Gordon & Gotch Limited Enterprise Bargaining Agreement 1997, No. AG 43 of 1997."

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Term of Agreement
6. Relationship to Award
7. Wages
8. Sick Leave Bonus
9. Rostered Days Off
10. Meal Money

11. Redundancy Package
12. Grievance Procedure
13. Signatories

3.—AREA AND SCOPE

The area and scope of this Agreement shall be that prescribed in the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32 of 1976 ("the Award") as amended from time to time, insofar as it applies to employees of Gordon & Gotch Limited.

4.—PARTIES BOUND

This Agreement shall apply to and be binding on Gordon & Gotch Limited ("the Company"), and The Shop, Distributive and Allied Employees' Association of Western Australia ("the union") and shall apply to all employees employed at the Company's operation in Perth, who are employed in the callings listed herein.

It is estimated that 40 employees will be bound by this Agreement upon registration.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from 1 February 1997 and shall expire on 31 January 1999.

(2) The parties to this Agreement shall begin negotiations for a new Agreement at least 3 months prior to the expiration of this Agreement.

(3) Following its expiry, the Agreement shall continue to operate until varied by the parties or replaced by another Agreement.

6.—RELATIONSHIP TO AWARDS

(1) This Agreement shall be read and interpreted wholly in conjunction with the Award, as varied from time to time, as identified in Clause 3.—Area and Scope, of this Agreement.

(2) Where there is any inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of that inconsistency. Where this Agreement is silent, Award provisions shall apply.

7.—WAGES

(1) Full Time Employees

The following wage rates shall come into effect on the first full pay period on or after the dates listed below and represent an 8.5% increase. The wage rates are for 38 ordinary hours per week.

	Current Rate	1Feb. 1997	1 Dec. 1997	1 July 1998	1 Nov. 1998
Warehouse Employee					
Level 1, Year 3	$429.45	$442.33	$448.97	$457.95	$467.11
Forklift Driver	$437.85	$450.99	$457.75	$466.91	$476.24
Warehouse Employee					
Level 2, Year 2	$443.94	$457.26	$464.12	$473.40	$482.87
Warehouse Employee					
Level 3, Year 3	$450.14	$463.64	$470.60	$480.01	$489.61

(2) Part Time Employees

Part time employees shall receive payment for ordinary hours of work at an hourly rate of one thirty eighth of the appropriate rate prescribed by subclause (1) of this clause.

(3) Casual Employees

A casual employee shall be paid one thirty eighth of the appropriate rate prescribed in subclause (1) of this clause, and in addition a loading in accordance with the following scale for all ordinary hours of work:

(a) Where the casual engagement on any day is for a full day's work, a loading of 20%;

(b) Where the casual engagement on any day is for less than a full day's work, a loading of 25%.

(4) This Agreement shall not operate to cause any employee to suffer a reduction in an overaward payment.

(5) All allowances, as prescribed by the Award, shall be increased in line with the wage increases as detailed in subclause (1) of this clause.

8.—SICK LEAVE BONUS

(1) As an incentive to reduce absenteeism, a sick leave attendance bonus shall be paid each year in recognition of attendance at work on a consistent basis over the twelve month period Christmas 1996 to Christmas 1997 and the twelve month period Christmas 1997 to Christmas 1998. Payment for each year shall be determined as follows:

Nil Days Sick—50% of the Employee's Ordinary Weekly Wage

1 Day Sick—40% of the Employee's Ordinary Weekly Wage

2 Days Sick—30% of the Employee's Ordinary Weekly Wage

3 Days Sick—20% of the Employee's Ordinary Weekly Wage

4 Days Sick—10% of the Employee's Ordinary Weekly Wage

5 Days Sick—Nil

(2) Payment in accordance with subclause (1) of this clause shall be made in the week prior to Christmas each year.

(3) Payment in accordance with subclause (1) of this clause shall not be deducted from an employee's accrued sick leave entitlement.

9.—ROSTERED DAYS OFF

The parties have agreed that the system of a Rostered Day Off, (R.D.O.), for all full time employees shall be continued for the term of this Agreement.

(1) Full time employees shall be rostered to work ordinary hours over not more than 19 days in any four week roster cycle. Employees shall be rostered to work eight ordinary hours for each of the 19 days in the four week roster cycle.

(2) By mutual agreement between the Company and an employee, an employee may accumulate up to five R.D.O.'s in any calendar year. Accumulated R.D.O.'s may be added to the employee's annual leave, or taken at another time as mutually agreed between the employee and the Company.

10.—MEAL MONEY

(1) An employee shall be paid a meal allowance of $7.00 when he or she is required to continue working after the usual finishing time for more than two hours.

(2) Meal money may be paid prior to the meal period on the day upon which the overtime is worked, or as part of the normal weekly wage.

(3) The meal allowance shall be increased in line with the wage increases as prescribed by subclause (1) of Clause 7—Wages.

11.—REDUNDANCY PACKAGE

As part of the restructuring of the Company's business a voluntary redundancy package is being offered to affected employees as follows:

(1) Four (4) weeks pay in lieu of notice;

(2) Four (4) weeks pay for every year of service or part thereof , provided that payment is not to exceed the payment which would have been due for the period, had the employee worked to his or her normal retirement age (65);

(3) Payment of the employee's accumulated sick leave entitlement;

(4) Long Service Leave to be paid on a pro-rata basis and to be calculated from the employee's date of commencement of service;

(5) Annual leave accrued to the date of termination will be paid with 17.5% leave loading;

(6) An additional eight (8) weeks payment will be made to employees whose age exceeds 40 years, excepting where an employee takes advantage of subclause (7) of this clause;

(7) Employees securing alternative employment following notice of redundancy shall be entitled to leave the Company's employment prior to the termination date and shall receive the redundancy benefits as specified in this clause;

(8) Written details of the composition of the payment shall be provided to employees accepting the redundancy package together with a written record of service and separation certificate;

(9) Superannuation entitlements will be paid out in accordance with Superannuation Fund Trust Deeds and subject to relevant Government Legislation. The Gordon and Gotch Superannuation Fund provides for fully vested benefits;

(10) Assistance will be provided to employees to obtain alternative permanent employment.

12.—GRIEVANCE PROCEDURE

(1) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure:

(a) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.

(b) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.

(c) If not settled the matter shall be discussed between an official of the union and an appropriate representative of the Company.

(2) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) of this clause, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(3) It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

13.—SIGNATORIES

For and on behalf of The
Shop, Distributive and Allied Employees'
Association of Western Australia:

.....Signed.....

Signature Date: 17 January 1997

Joe Bullock
Name of Signatory

General Secretary
Position of Signatory

For and on behalf of
Gordon & Gotch Limited:

.....Signed.....

Signature Date: 30 January 1997

Robert Carter
Name of Signatory

Operations Manager W.A.
Position of Signatory

GOVERNOR'S ESTABLISHMENT GARDENING STAFF ENTERPRISE AGREEMENT 1996
No. AG 15 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Others

and

Official Secretary to His Excellency the Governor of Western Australia.

No. AG 15 of 1997.

COMMISSIONER J.F. GREGOR.

27 February 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 15 OF 1997

HAVING heard Mr R. Ho on behalf of the first named party and Mr K. Skipworth 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 Governor's Establishment Gardening Staff Enterprise Agreement 1996, filed in the Commission on 21 January 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

1.—TITLE

This Agreement shall be known as the "Governor's Establishment Gardening Staff Enterprise Agreement 1996" No. AG 15 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound by Agreement
4. Scope
5. Effect of Agreement
6. Duration of Agreement
7. Shared Vision and Mission for Government House
8. The Consultative Process to Achieve This Agreement
9. What Do We Want to Achieve Through Enterprise Bargaining
10. Objectives of this Agreement
11. The Issues
12. Workplace Improvement and Performance Indicators
13. Productivity Measurement

GENERAL CONDITIONS OF EMPLOYMENT

14. Definitions
15. Contract of Employment
16. Hours of Duty
17. Overtime
18. Meal Breaks
19. Confidentiality
20. Wages
21. Wages Review
22. Higher Duties Allowance
23. Annual Leave
24. Leave Without Pay
25. Sick Leave
26. Bereavement Leave
27. Long Service Leave
28. Public Holidays
29. Training
30. Uniforms and Protective Clothing
31. Grievance Settlement Procedure
32. Tools

33. Rest Room
34. Signatures of the Parties
Schedule A
Schedule B

3.—PARTIES BOUND BY AGREEMENT

This agreement is made between the Official Secretary to His Excellency the Governor of Western Australia and the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

4.—SCOPE

This agreement shall apply to an estimated 6 employees appointed under Section 4 (1) of the Governor's Establishment Act 1992 in the class of Garden Staff under the Gardeners (Government) Award 1986, No. 16 of 1983.

5.—EFFECT OF AGREEMENT

This agreement shall be read in conjunction with the Gardeners (Government) Award 1986, No. 16 of 1983 and any other award or industrial agreement of the Western Australian Industrial Commission which may be deemed to apply to the class of employment detailed under Clause 4—Scope. In the event of any inconsistencies, this agreement shall have precedence to the extent of the inconsistencies.

6.—DURATION OF AGREEMENT

(1) This Agreement, incorporating an initial three (3) percent enterprise bargaining pay rise, shall operate from the first pay period commencing on or after the 13 October 1996 and shall remain in force for a period of three years.

(2) The parties will review this Agreement six months prior to the date of expiration of this Agreement as to renewal or replacement of the Agreement.

(3) Following the process of review this Agreement will be renewed or replaced by another Agreement or cancelled as appropriate. If cancelled employees shall revert to the Gardeners Government Award 1986, No. 16 of 1983 or relevant award.

(4) The pay quantums achieved as a result of this agreement will remain and form the new base rates for future Agreements or continue to apply in the absence of a further Agreement.

7.—SHARED VISION AND MISSION FOR GOVERNMENT HOUSE

The parties to this agreement are committed to striving to achieve the Governor's Establishment's vision which is:

TO PROVIDE A STANDARD OF EXCELLENCE IN THE PRESENTATION OF THE GOVERNMENT HOUSE DOMAIN.

In achieving our mission we have six primary values which shape the way we will operate. These are:

- Satisfying the public of Western Australia.
- Satisfying the Vice Regal representatives.
- Continuous performance of excellence.
- Integrity and dignity.
- Concern for the natural environment.
- Concern for heritage values.

To achieve our vision and mission we will need to pursue the following:

- Operate in accordance with the most appropriate management and operating practices consistent with the guidelines established by a professional management plan.
- Provide cost effective service at minium long term cost.
- Develop an equitable, safe and healthy work environment in which employees' personal contributions and growth are supported and encouraged.
- Deliver agreed community and public service on behalf of the Government.
- Conform with heritage and conservation obligations.
- Actively fulfil our environmental commitment and the principles of environmentally sustainable development.

8.—THE CONSULTATIVE PROCESS TO ACHIEVE THIS AGREEMENT

In order to achieve this agreement the parties agreed to form a single bargaining unit, comprising management, employees and union representation.

The processes established in arriving at this agreement involved regular consultative meetings between the union, the Governor's Establishment and employee representatives.

The education process involved awareness and information sharing sessions from Department of Productivity and Labour Relations and the union. The garden staff unanimously chose the Enterprise Bargain option and then enlisted the assistance of their union for the negotiation process. The garden staff participated in the drafting of this Agreement and all employees have received a copy of the Agreement in advance of its endorsement. These processes will cease to exist once this agreement is ratified by the Industrial Commission.

9.—WHAT DO WE WANT TO ACHIEVE THROUGH ENTERPRISE BARGAINING

The Governor's Establishment will continuously strive to provide quality support to the Office of the Governor and to retain the cultural significance and dignity of the Government House, the Ballroom and the Gardens. Enterprise Bargaining will assist this by—

- Improving the quality of working life for all garden staff.
- Facilitating an efficient improvement process by encouraging garden staff to identify and deal with real productivity barriers in a participative manner.
- Continuous improvement of all processes to achieve reduced cost, less waste and improve quality, technology, work organisation, safety and training.
- Garden staff actively supported by the Supervisor contributing ideas for improvement of opportunities and assisting with their implementation.
- Encouraging and facilitating team work and team performance.
- Improving existing consultative processes.
- Developing the skills of employees through the provision of appropriate training.

10.—OBJECTIVES OF THIS AGREEMENT

BROAD AGENDA

The parties acknowledge that a broad agenda must be considered in the implementation of improved productivity within the Governor's Establishment.

CENTRAL TO THE AGREEMENT

Central to this Agreement there is a commitment to maintaining a standard of excellence in the preservation of Government House, the Ballroom and the Gardens as a fitting domain for the Head of State. The parties acknowledge that the Governor's Establishment's employees are its most valuable asset and that involvement in and the development and implementation of processes for continuous workplace improvement will be done in full consultation with employees and the union representative.

11.—THE ISSUES

WORK PLACE CHANGE

It is agreed that the gardens of the Governor's Establishment must be maintained to a standard of excellence befitting the residence of the Head of State.

The focus must be on introducing flexibilities which will result in fundamental changes to how the gardeners' work is organised, what work is carried out and when the work is carried out.

Such issues include:

(1) Work flexibility

- maintenance and minor repairs to garden machinery
- installation of reticulation systems
- cleaning and maintenance of swimming pool
- setting up the Ballroom for functions, liaise with Ballroom hirers and "breaking down" of Ballroom settings post function

- supporting security and public relations procedures by identifying and directing visitors to the grounds where necessary.

(2) Hours flexibility

- hours to be worked and accumulated over busy periods without overtime penalties
- credit hours to be utilised as time off in quiet periods ie; no RDO's.

(3) Skills development

- move towards implementation of multiskilling and work teams concepts.

MANAGEMENT OF WORK AND USE OF RESOURCES

A management plan for the effective planning, development and management of the grounds is to be implemented and will assist in providing a framework for—

- Improved efficiency of use of resources—scheduling, allocation and performance reporting of work undertaken.
- Provision of technical data relevant to the heritage and archaeological significance of the site.
- Simplification and change of work processes and procedures.
- Implementation and use of new technologies including those relevant to environmental issues.

COMMON CONDITIONS

This agreement seeks to provide common conditions of employment that will cover clauses in the various awards of employees throughout the Governor's Establishment. While providing common conditions the agreement will allow work teams to take into account issues which may be unique to their area. Conditions such as hours, rostering systems and leave scheduling may be included.

12.—WORK PLACE IMPROVEMENT AND PERFORMANCE INDICATORS

The parties agree that regular reviews with employee involvement will be undertaken of each function with the aim of providing an efficient and effective service. Expert industry assistance will be sought if and when required .

Performance indicators have been established to address the following key areas—

- Quality approach—heritage standards as required by the Government House Gardens Management Plan.
- Satisfaction of Vice Regal requirements.
- Employee satisfaction and safety which may be measured through factors such as absenteeism, workers compensation.
- Measurement of controllable costs.

13.—PRODUCTIVITY MEASUREMENT

The parties agree that the measurement and monitoring of productivity improvements is important because it provides feedback to the parties on performance.

It is agreed that productivity measurement is vital for performance monitoring arrangements to be successful on an ongoing basis.

It is agreed that productivity measurement monitoring programme be jointly developed between management, employees and the union bound by this agreement as part of the overall aim of improving productivity at the Governor's Establishment.

GENERAL CONDITIONS OF EMPLOYMENT

14.—DEFINITIONS

Employer

"Employer" means the Official Secretary to His Excellency the Governor of Western Australia.

Part-time Employee

"Part-time employee" means a person engaged to work regularly for fewer hours per week than a full-time employee.

Fixed Term Contract Employee

A "fixed term contract employee" shall mean a person engaged by the employer to relieve a full-time or part-time employee for a specific period of leave or to perform specific duties over a fixed time period determined by the employer.

The employer shall specify the number of hours, days or weeks to be worked.

Casual Employee

"Casual employee" shall mean a person engaged to work on an irregular basis as and when required.

Overtime

"Overtime" means all work performed at the direction of the employer outside the ordinary hours of duty.

15.—CONTRACT OF EMPLOYMENT

(1) Employees may be engaged on a full time, part time, casual or fixed term contract basis.

(2) Employees will be advised of the terms of their employment in writing at the time of their engagement.

(3) Probation:

New employees, other than fixed term contract or casual employees, shall be subject to a probationary period.

The initial period of probation shall not exceed 6 months. However, this period may be extended by the employer for a further 3 months. In this case, the employee will be advised in writing of the reasons for the extension. After the 3 month period has expired the employee must be offered a permanent position or be terminated.

(4) Termination:

The employment of full-time and part-time staff may be terminated by the provisions of two (2) weeks notice by either party or the payment or forfeiture of two weeks normal salary as the case may be. This may be reduced by mutual agreement between the employer and the employee.

Provided that the employer may dismiss an employee without notice in the case of misconduct.

(5) Conduct:

All employees shall promptly and correctly carry out all duties they are directed to perform by the employer within their area of responsibility. Provided that these fall within the scope of his/her abilities, skills and training.

These duties shall include and not be limited to:

- maintenance and minor repairs to garden machinery
- installation of reticulation systems
- cleaning and maintenance of the swimming pool
- setting up of the Ballroom for functions, liaison with Ballroom hirers and breaking down of Ballroom settings post function.
- supporting security and public relations procedures by identifying and directing visitors to the grounds where necessary.

16.—HOURS OF DUTY

(1) The ordinary hours of work for employees covered by this Agreement may be worked on any or all of the seven days of the week, between the hours of 5.00am and 6.00pm as determined by the employer.

(2) The ordinary working hours shall be an average of 41 hours per week to be worked on a cycle as determined by the employer.

(3) The employer may vary the hours of duty arrangements to improve productivity, efficiency and cost effectiveness in the workplace. Employees will be given one month's notice of any variation to the hours of duty.

(4) If an employee leaves his/her employment during or his/her employment is terminated by the employer during a working cycle, then the employer shall complete a calculation to determine whether the employee has any debit or credit hours.

Should the employee have credit hours owing to him/her then the employer shall pay the officer the balance of credit hours at the ordinary rate of pay.

Should the employee be in debit then the employee shall pay to the employer the balance of hours owing. The employer shall have the right to deduct this amount from the employee's final pay.

17.—OVERTIME

(1) An employee who works overtime shall be entitled to payment in accordance with subclause (b) of this clause or time off in lieu of payment in accordance with subclause (c) of this clause, or any combination thereof.

(2) Payment of overtime shall be calculated on the following basis:

Days	Rates
Weekdays	Time and one half
Weekends	Double time
Public Holidays	Double time

(3) By mutual agreement between the employee and the employer, employees shall be entitled to take time off in lieu equal to the amount of overtime worked, at the equivalent overtime rate.

(4) After any given period of overtime the employee shall not commence normal duties until at least 10 hours has elapsed provided that by mutual agreement between the employer and the employee may commence normal duties before 10 hours has elapsed.

(5) Overtime shall be calculated on a daily basis.

18.—MEAL BREAKS

(1) Gardening staff shall be entitled to an unpaid meal break of 30 minutes duration each working day.

(2) Meal breaks are to be taken at a time agreed between the employee and the employer.

(3) Gardening staff shall be entitled to a 10 minute tea break as directed by the employer. Such break shall be counted as time worked.

19.—CONFIDENTIALITY

All employees shall:

(a) Strictly observe the requirement of the confidentiality of all information relating to Government House, Western Australia.

(b) Under no circumstances discuss with any representative of the media any aspect of the operation of Government House without prior permission of the Official Secretary or Deputy Official Secretary.

20.—WAGES

(1) The wages payable to employees covered by this Agreement shall be as contained in Schedule A.

(2) Part-time employees shall be paid the proportion that the hours worked bear to the normal weekly rate of pay applicable to the equivalently classed full-time employee.

(3) Casual employees shall be paid an hourly rate calculated by dividing the normal weekly rate of pay applicable to the equivalently classified full-time employee by the full ordinary hours of work prescribed for an equivalently classified full-time employee. In addition, casual employees shall be paid a loading of 20% in substitution for paid annual leave, long service leave, sick leave and public holidays. This rate shall apply to all time worked.

(4) The salary level applicable to apprentices will be determined in accordance with the Commonwealth or State Government sponsored scheme under which they are engaged. Such employee will be advised of their salary in writing at the time of their engagement.

21.—WAGES REVIEW

(1) The parties agree that the wages payable to employees covered by this Agreement will be increased by a further three (3) percent, twelve months after the date of registration of this Agreement subject to the following:

(a) The agreed productivity targets being met which may include implementation of elements of the Government House Gardens Management Plan which will be reviewed on an ongoing basis.

(2) The parties agree that the wage increases contained in this agreement may be further reviewed in light of the outcome of any National or State Wage Case decision during the term of this agreement.

22.—HIGHER DUTIES ALLOWANCE

Where a senior staff member is absent and their supervisory duties are being performed by another staff member for a minimum of 5 consecutive days, that staff member shall be paid a Supervisor's Allowance of $30 per week extra.

23.—ANNUAL LEAVE

Entitlement:

(a) Each employee is entitled to 164 hours paid leave for each year of employment. Annual leave shall be calculated on a calender year basis commencing January 1 in each year. On written application an employee shall be paid salary in advance when proceeding on annual leave.

(b) The provisions of this clause do not apply to casual employees.

(c) An employee commencing after January 1 is entitled to pro-rata annual leave for that year calculated on the basis of 3.15 hours leave for each completed week of continuous service.

(d) An employee may take annual leave during the calender year in which it accrues or anytime thereafter, but the time during which the leave may be taken is subject to the approval of the employer.

(e) An employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue 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 in the event of the death of an employee.

(f) If after one month's continuous service in any qualifying twelve monthly period an employee lawfully terminates his or her service, or his/her service is terminated by the employer through no fault of the employee, the employee shall be paid 3.15 hours in respect of each completed week of continuous service in that qualifying period.

Part-time Entitlement:

(a) A part-time employee shall be granted annual leave in accordance with this clause, however payment to a part-time 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) Should any public holiday prescribed under Clause 28.—Public Holiday falls within the period of the employees leave and is observed on a day on which that employee would normally work, one day shall be added to the period of leave for each holiday so occurring.

Loading:

An annual leave loading equivalent to 17.5% of the wages payable for the annual leave period shall be incorporated in the weekly rate of pay.

24.—LEAVE WITHOUT PAY

(1) The employer may grant an employee 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 at Government House is not inconvenienced.

(b) All other leave credits of the employee are exhausted.

(3) An employee on a fixed term contract shall not be granted leave without pay.

25.—SICK LEAVE

(1) Employees shall be entitled to 82 hours of sick leave in each year of service on account of personal illness or injury.

(2) Sick leave shall accrue on the basis of 1.57 hours for each completed week of continuous service.

(3) Unused sick leave shall accumulate from year to year and may be taken in any subsequent year in the case of personal illness or injury in addition to their entitlements for that year.

Conditions of granting sick leave:

(4) The employee claiming sick leave must, as soon as practicable, inform the employer of his or her inability to attend work and as far as known, state the nature of the illness or injury and the estimated duration of his or her absence.

(5) The employee must prove to the satisfaction of the employer that he or she was unable to attend work on account of personal illness or injury on the days for which sick leave is claimed, provided that 2 consecutive days or 5 single days shall be allowed in any year without the production of such proof.

Without such proof, the employer shall not be required to make any payment for a time an employee is absent from work.

(6) The employee shall not be entitled to paid sick leave for any period in which he or she is entitled to workers compensation.

(7) The employer shall not be required to make any payment for unused sick leave upon termination of employment.

(8) The provisions of this clause do not apply to casual employees.

(9) An employee who is absent on leave without pay is not eligible to sick leave during the currency of that leave without pay.

(10) No sick leave will be granted with pay, if the illness has been caused by the misconduct of the employee or in any case of absence without sufficient cause.

(11) An employee shall have debited from his/her sick leave credits the number of ordinary hours he/she would have worked on that day had he/she not been absent on sick leave.

(12) An employee may use up to 41 hours of his/her own sick leave credits in the case of illness of an immediate family member. An application for sick leave for the illness of an immediate family member shall be supported by the certificate of a registered medical practitioner.

Sick leave on annual leave:

(13) 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 employer that as a result of the illness the employee was confined to his/her place of residence or a hospital for a period of at least seven consecutive calendar days, the employer may grant sick leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

Sick leave on long service leave:

(14) 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 employer that as a result of the illness the employee was confined to his/her place of residence or a hospital for a period of at least fourteen consecutive calendar days, the employer 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.

26.—BEREAVEMENT LEAVE

(1) An employee shall on the death of:

(a) the spouse or de facto spouse of the employee

(b) the child or step-child of the employee

(c) the parent or step-parent of the employee

(d) the brother or sister of the employee

(e) any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave of up to 2 days.

(2) The 2 days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

27.—LONG SERVICE LEAVE

The conditions governing the granting of long service leave to Government wages employees generally shall apply to employees covered by this Agreement.

28.—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 another day may be taken as a holiday by arrangement between the parties in lieu of any of the above mentioned days.

(2) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

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.

29.—TRAINING

The parties are committed to training which is deemed by the employer Secretary to be relevant to their job. Government House will meet the costs of such training and will provide such time off as may be required and as is deemed reasonable by the employer.

30.—UNIFORMS AND PROTECTIVE CLOTHING

(1) An employee who is provided with a uniform for use in connection with their official duties shall:

(a) Appear clean and tidy and, unless otherwise directed, dressed in the uniform at all times.

(b) Not alter the uniform without approval.

(c) Wear the uniform only when on duty or proceeding to or returning from duty.

(d) If required by the employer, pay all costs incurred in the repair or replacement of that uniform if it is damaged or lost through carelessness on the part of the employee.

(e) Return the uniform to the employer upon termination of their employment.

(2) The employer will replace items of uniform on the basis of fair wear and tear.

(3) Employees will be provided with protective clothing and safety equipment as deemed necessary by the Garden Supervisor.

(4) For their own safety, employees will be required to wear such clothing and equipment as directed by the Garden Supervisor unless they present a medical certificate stating the reason why they cannot wear a particular item.

31.—DISPUTE SETTLEMENT PROCEDURE

(1) Regular discussion shall take place between management and employees to identify and alleviate any concerns which may lead to questions, disputes or difficulties arising under this industrial agreement.

(2) Should a question, dispute or difficulty arise, the procedures set out below shall be followed for settlement:

(a) The matter should be discussed in the first instance between the employee or group of employees and their immediate supervisor.

(b) If unresolved, the matter should be referred to the Deputy Official Secretary who will discuss it with the employee(s) concerned and official from the A.L.H.M.W.U if required.

(c) If still unresolved, the matter shall be referred to the Official Secretary who will seek a resolution with the concerned parties.

(d) Should the matter remain unresolved it will be referred to the Western Australian Industrial Relations Commission.

32.—TOOLS

The employer shall supply all necessary tools required for the performance of the employee's duties.

33.—REST ROOM

The employer shall provide a rest room equipped with washing and tea and coffee making facilities, and first aid kit.

34.—SIGNATORIES

Signed on behalf of
THE AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, MISCELLANEOUS WORKERS DIVISION, WESTERN AUSTRALIAN BRANCH

.....*Signed*.....

Signature Date: 21 January 1997

Helen Creed

Name of Signatory

Signed on behalf of
HIS EXCELLENCY THE GOVERNOR OF WESTERN AUSTRALIA

.....*Signed*.....

Signature Date: 21 January 1997

_____

Name of Signatory

Official Secretary

Position of Signatory

SCHEDULE A

Minimum weekly rates for full-time Governor's Establishment garden staff shall be as follows:

		$
Level 1	Probationary Gardener (1) Total Weekly Wage	449.80
Level 2	Gardener (Standard) Total Wage	508.50
Level 3	Gardener (Senior) (2) Total Wage	539.70

(1) Refer to subclause (3) and (4) of Clause 15—Contract of Employment. Skills and performance appraisal by employer.

(2) Qualified with Certificate in Horticulture or equivalent combination of appropriate experience/skills/education subject to recognition by qualified independent arbitrator.

SCHEDULE B

FLEXIBLE WORKING HOURS POLICY

Concept:

Based on a 41 hour working week, all staff shall be required to account for 2,132 hours within one period (one year). This consists of 1,968 working hours (including public holidays) and 164 annual leave hours, based on 48 working weeks and 4 weeks annual leave.

Settlement Period:

In the first instance shall end at 30 June 1997 and then revert to a period of 1 July to 30 June. Each settlement period will begin at nil hours worked plus or minus the balance of hours from the previous period.

For fixed term contract employees, the settlement period shall be the period identified in the contract of employment. Should the employee's contract be extended the settlement period shall adjust accordingly.

Recording of Hours Worked:

All staff eligible under the provisions of this policy shall be required to maintain a time sheet for flexible hours worked over the settlement period.

Recording of hours shall be completed on a weekly basis on a control sheet provided.

A control sheet shall be provided to the Deputy Official Secretary each Monday in lieu of overtime sheets. At the end of the settlement period, the Deputy Official Secretary will audit and archive the control sheet.

Auditing:

The Deputy Official Secretary will audit the Annualised Flexible Hours Record sheet each quarter period. A final audit will be completed at the end of the settlement period.

Credit/Debit Hours:

No limit shall be set for credit hours accumulated by an employee. Credit hours shall be carried over from one settlement period to the next.

A maximum of 10 debit hours only will be permitted to be carried over from one settlement period to the next. Up to a maximum of 41 hours can be recorded at other times during the year.

Should an employee be more than 10 hours in debit at the end of settlement, the employer shall deduct from the employees first pay in July for debit hours in excess of 10 hours.

Flexi-Leave:

Flexi-leave shall be recorded on the control sheet when taken.

Employees shall be permitted to add flexi-leave to annual leave, long service leave and public holidays subject to approval.

Cessation of Employment:

Should the employee have credit hours at the cessation of employment then the employer shall pay the employee the balance of credit hours at the ordinary rate of pay.

Should the employee have debit hours at the cessation of employment then the employer shall recover the outstanding hours from the employee's final pay.

In each instance the pay adjustment shall be determined on an annual basis.

HOWARD PORTER PTY LTD ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 48 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union Of Workers—Western Australian Branch

and

Howard Porter Pty Ltd.

No. AG 48 of 1997.

Howard Porter Pty Ltd Enterprise Bargaining Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

6 March 1997.

Order.

HAVING heard Mr G.C. Sturman on behalf of the Applicant and Mr M.C. Borlase 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 12th day of February, 1997 entitled Howard Porter Pty Ltd Enterprise Bargaining Agreement 1996 and subsequently amended on or about 26th February 1997 be registered as an industrial agreement.

(Sgd.) G.L FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

The Agreement shall be known as the Howard Porter Pty Ltd Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

2.1 Title
2.2 Arrangement
2.3 Area and Scope
2.4 Incidence and Parties Bound

2.5 Date and Period of Operation
2.6 Relationship to Parent Award
2.7 Single Bargaining Unit
2.8 Aims & Objectives
2.9 Australian Quality Awards
2.10 Training
2.11 Productivity Improvement Programme
2.12 Key Performance Indicators
2.13 Wages & Conditions
2.14 Tool Account
2.15 Toolbox Cover
2.16 Facilities
2.17 Length of Service Recognition
2.18 Clothing
2.19 Commitment
2.20 Dispute Resolution
2.21 Signatories

3.—AREA AND SCOPE

This Agreement shall apply to the O'Connor operations of Howard Porter Pty Ltd with respect to employees (approx 80) engaged in classifications specified in Clause 6.—Definitions of the Vehicle Builders Award No. 9 of 1971.

4.—INCIDENCE AND PARTIES BOUND

4.1 This Agreement shall apply to and be binding upon Howard Porter Pty Ltd ("the company") and all persons employed in the classifications set out in Clause 6.—Definitions of the Vehicle Builders Award No. 9 of 1971 at it's O'Connor workshops, and the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers—Western Australia Branch ("the union").

4.2 The parties to the agreement shall be the company and the union.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 27th December 1996, and remain in operation until 1 July 1998, and will not continue in force after this date unless renewed. All parties are committed to re-negotiating this Agreement and applying for it's continuation, replacement or cancellation before the expiry date.

6.—RELATIONSHIP TO PARENT AWARD

6.1 This Agreement shall be read and interpreted wholly in conjunction with the Vehicle Builders Award No. 9 of 1971.

6.2 Where there is any inconsistency between this Agreement and the Award stipulated, this Agreement shall prevail to the extent of inconsistency.

7.—SINGLE BARGAINING UNIT

7.1 For the purpose of this Agreement and in accordance with the decision in the December 1994, Western Australian State Wage Case, a single bargaining unit has been established by way of Consultative Committee. This Committee shall be comprised of the following members:

(i) Four representatives appointed by Management.

(ii) Four elected representatives of the workforce.

7.2 The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation progress and performance of the continuous improvement/project programme, and shall operate within the agreed parameters of the Howard Porter Consultative Committee Constitution.

8.—AIMS AND OBJECTIVES

The Agreement reflects a genuine commitment by all Howard Porter management and employees to work together for their mutual benefit. The following are the specific goals of the Agreement:

- To recognise and attend to the needs of our customers, employees and the corporation.
- To provide a means to create a culture of trust and commitment from all employees to work harmoniously together to improve the business performance and the work practices.
- To provide wage increases for the period of the Agreement that reflect the improved performance from working together and working smarter.
- To commit to continuous improvement by a selection of projects and monitoring performance through a number of key performance indicators.
- To measure the Company's performance annually by bench marking against the Australian Quality Awards System.
- To encourage and assist the Company's Social Club to attract members; to meet their needs and expectations; and so foster good social relations throughout the Company.

9.—AUSTRALIAN QUALITY AWARDS

A foundation of this Agreement is The Australian Quality Awards system as a measure of "best practice" throughout the organisation. The AQA system provides a broad based system of bench marking against ourselves and others in topics including: leadership; policy and planning; information and analysis; people; customer focus; and quality of process, product and service.

10.—TRAINING

10.1 All training should be planned and implemented in accordance with Company Training Procedure 030 (Quality Manual Section 22) which includes training needs analysis, training planning and implementation.

10.2 It is the intention of the committee that opportunities for further enhancement of skills will be identified through the nominated productivity improvement projects.

10.3 Where appropriate, training shall be accredited and competency based.

11.—PRODUCTIVITY IMPROVEMENT PROGRAMME

In accordance with the terms of the December 1994, State Wage Case decision, the following productivity, efficiency and flexibility measures have, or will be, implemented.

11.1 ***Consultation and Communication:***

Two-way communication between Management and employees via:

(a) Regular Management Meetings with all employees.

(b) Regular Consultative Committee Meetings.

(c) Fortnightly Toolbox Meetings to discuss scheduling and preventative programmes, 15 minutes prior to finish on Friday. This will facilitate communication to and from the Consultative Committee.

11.2 ***Employee Involvement:***

Employees are committed to become involved and to continue focusing on:

(a) Productivity projects to improve quality & output without increasing overall production costs.

(b) Reduction in Down Time and Waste wherever possible.

(c) Customer Service, both internal and external.

11.3 ***Productivity Projects:***

The company will instigate and co-ordinate teams to undertake productivity improvement projects, as identified and published by the Core Team. The teams will be selected on the basis of those who can contribute to the identification, solution and implementation of particular productivity, quality and safety projects. Where the successful implementation of these projects identify significant gains for the company then it will allow for management consideration of a gains sharing system.

The Projects are (not listed in priority);

(a) Customer Focus

(b) Safety

(c) Human Resources—*utilisation, training and development*

(d) Design and Development—*product and process*

(e) Production Control and Scheduling

(f) Materials Purchasing, Storage and Distribution

(g) Quality
(h) Plant and Equipment
(i) Workflow on the Shop Floor
(j) Communication

11.4 ***Teams:***

Project teams will research the projects:

(a) Define the scope, objectives, outcomes
(b) Measure current productivity or lack there of
(c) Investigate current practice, and alternative solutions
(d) Report and obtain approval
(e) Act to achieve implementation
(f) Measure results

11.5 ***Performance Indicators:***

The success of the project will be judged by the measurements of the process taken before and after. Appropriate measurements will be designed for each project.

12.—KEY PERFORMANCE AREAS

The following Key Performance Areas represent the critical functions within the Howard Porter organisation that must perform well to be successful. The KPA's are shown roughly in sequence with the workflow process and not in any order of importance.

SALES / CUSTOMER LIAISON—To service the needs of our customers better than our competitors.

ENGINEERING DESIGN—To provide innovative, well engineered products and technical support to sales and production.

MATERIALS SOURCING & SUPPLY—To efficiently procure, store and distribute materials necessary for sales and production.

PRODUCTION—To coordinate the manufacturing process bringing together manpower, tools, facilities, materials and services to most efficiently produce for the needs of customers on time and to the required quality standard.

SERVICE SUPPORT—To ensure a high level of technical and parts service / support to customers operating HP and other equipment.

QUALITY—To control all processes within the Company to ensure that the expectations of customers are met.

HUMAN RESOURCE DEVELOPMENT—To invest in our people to ensure availability of skills and / or training to suit the Company's requirements.

SAFETY—To ensure a safe and healthy work environment for all employees and to develop a safety-conscious workforce.

ADMINISTRATION—To maintain the necessary statutory records of the Company; to provide appropriate management information to other sections of the Company; and to control all financial matters.

13.—WAGES

13.1 ***Wage Rate Calculation***

(a) The wage paid to an individual workshop employee is calculated as follows:

i. Enterprise Agreement Classification Rate
PLUS
ii. Any over-rate payment
PLUS
iii. Tool money allowance per award
PLUS
iv. Leading hand allowance per award

i + ii + iii + iv = Employee Wage Rate

(b) Overtime is calculated on the Employee Wage Rate as shown in 13.1 (a) above.
(c) Superannuation is calculated on the Employee Wage Rate as shown in 13.1 (a) above.
(d) The attendance allowance and any other award allowance, where applicable, are additional to above.

13.2 ***Attendance Allowance***

The attendance allowance will be paid at the rate of $6 per day for each full workday Monday to Friday inclusive. The attendance incentive will not be paid when —

(a) an employee arrives more than 6 minutes late from their starting time
(b) an employee does not complete their standard 7.6 hrs of work.
(c) leave is taken (inclusive of annual, sick, workers compensation etc.).
(d) statutory holidays.
(e) Saturday and Sunday work.

If an employee only works 3 out of the 5 days then their attendance payment for the week is.$6 x 3 = $18.

13.3 ***Wage Rate Increases***

(a) In recognition of expected successful productivity projects all workshop employees will receive a 2% increase to their current Enterprise Agreement Classification Rate from the first pay period after 1 July 1997.
(b) In recognition of expected successful productivity projects the classification rates shall increase by 2% from the first pay after 1 January 1998.
(e) The following table shows the wage rate increases applicable to the Enterprise Agreement Classification Rates (see 13.1 (a)i. above) over the life of the agreement.

ENTERPRISE AGREEMENT CLASSIFICATION RATE TABLE

Enterprise Agreement Classification	Howard Porter Reference	Award Rate	HP Current Rate	2 % Increase 1/7/97	2 % Increase 1/1/98
ATVB	VC6	558.30	578.10	589.66	601.45
ABTLIV	VC7	495.80	545.30	556.20	567.33
ABTLIII	VC8	474.90	512.40	522.65	533.10
ABTLII	VC9	454.10	479.60	489.19	498.98
ABTL1	VC10	433.20	446.80	455.73	464.85
ABLIV	VC11	401.50	422.50	430.95	439.57
ABLIII	VC12	380.60	398.40	406.37	414.50
ABLII	VC13	358.10	374.30	381.78	389.42
ABLI	VC14	341.40	350.30	357.61	364.76

13.4 ***Over-rate Payment***

Nothing in this Enterprise Agreement will prevent the payment of wages above the classification rates at the discretion of the Works Management. This over rate payment may be adjusted up or down to reflect employee performance. The employee will be interviewed and advised of the reasons for changes in over rate payment at their annual appraisal.

13.5 ***Hours***

The ordinary hours of work shall be an average of 38 hours per week may be worked on any or all days of the week Monday to Friday inclusive, and except in the case of shift employees, be worked between the hours of 5am and 8pm. Provided that the spread of hours may be altered by agreement between the employer and the majority of employees in the plant, section or sections concerned.

13.6 ***Travel and training***

Employees required to travel to a location other than the normal place of work for work or approved training purposes, will be paid at the single rate of pay for the period of travel no matter what time or day of the week is involved.

Employees involved in company training that might occur outside normal hours of work will be paid at the single rate no matter what time or day of the week this may involve.

14—TOOL ACCOUNT

The Company makes available a facility for employer to purchase work-related items on a Company order. The cost of these items are booked against the employee's tool account which is then repaid over a fixed time period through weekly wage deductions. No interest or handling charges will be applied by the Company. Other than apprentices, there is a qualifying employment period of 3 months before an employee is entitled to this privilege.

The maximum amount to be booked to a tool account is $500 or the balance of wages and leave owing, whichever is the lesser. The rate of repayment is to be such that the initial purchase is repaid over a maximum period of 20 weeks or 5% per week of the initial total cost. Upon termination, the outstanding balance of an employee's tool account will be deducted in full from the final amount.

15—TOOLBOX COVER

• All tradesmen, trades assistants and apprentices must provide at their place of work a toolbox containing a minimum quantity of tools as specified in the Company's Corporate Procedure 4 E.1

• Toolbox's and tools must be well maintained

• Employees can carry additional tools to those specified provided approval is given by the Works Management.

• It is the responsibility of the workshop supervision to maintain an up to date tool list of all employees toolbox's.

• New employees must have toolbox's with the minimum quantity of tools within four weeks of starting.

• Toolbox audits will be carried out by workshop supervision to ensure that tools, quantities are as specified and well maintained.

• Employees found to have toolbox's incomplete or in need of maintenance will be given one week to bring them back to the required standard.

• The company provides insurance for employee toolbox's and tools while on the company premises and company vehicles, the parameters of this cover is to be issued to all employees.

• Tools and toolbox's will be replaced by the company to the value and standard of the lost items.

16—FACILITIES

The Company will improve and fully maintain the lunchroom and toilet/change room facilities. A list detailing the cleaning duties and standards for these areas is to be displayed outside the entrance door of each facility to ensure that everyone has a common understanding of the expectations.

17—LENGTH OF SERVICE RECOGNITION

Howard Porter has a reputation as a good, stable employer and as a result has many long serving employees. A plaque with the names of employees having completed 25 years of service has been in the Company's entrance foyer for at least the last 20 years. This recognition is to be extended with the introduction of the Howard Porter Long Service Recognition Program.

18—CLOTHING

All employees listed under the Enterprise Agreement Classification for Vehicle Body Builders and Apprentices will be provided with work clothing. Clothing supplied by the company will be worn at all times during working hours.

• The Howard Porter uniform is dark blue shirts, trousers or overalls. The company name will be embroidered on the shirt or overalls above the breast pocket. Supervisors may choose brown or khaki colours.

• For the first year three shirts and three trousers will be provided in August 1996.

• If an employee prefers overalls rather than trousers and shirt, an issue of three pairs will be made in August 1996.

• Clothing will be replaced on a wear and tear basis in a controlled manner.

• It is the responsibility of employees to keep company supplied clothing clean and well maintained.

• Employees who do not conform to these conditions may lose the privilege of having clothing supplied temporarily or permanently.

• New employees will work one month before eligible for company sponsored clothing. Two shirts and two pairs of trousers will be issued. If the employee leaves within six months of commencing, fifty percent of the purchase price of the clothing will be deducted from the termination pay.

• Boots will continue to be provided in accordance with the existing policy.

19—COMMITMENT

A fundamental condition of this Agreement is the commitment of all employees to "Best Practice", which is defined in the following extract:

> "The pursuit of best practice is the pursuit of world class performance. Best practice is the way in which the best organisations in the world manage and organise their operations. It is a moving target. As the leading organisations continue to improve the best practice goalposts are constantly moving.
>
> The concept of continuous improvement is integral to the achievement of international best practice. The strategies of leading edge firms ensure the continuous improvement of all facets of their operations."

Some general principles of best practice include the following:

- Shared vision for world class performance
- A strategic plan developed in conjunction with employees
- A commitment to change throughout the organisation
- Flatter organisation structures
- A cooperative and participate industrial relations culture
- A commitment to continuous improvement and learning
- Innovative human resources policies including Occupational Health and Safety, and Equal Opportunity Employment
- A focus on customers both internal and external
- Close relationships with suppliers
- Pursuit of innovation in technology, products and processes
- Use of performance measurement systems and bench marking
- Integration of environmental management into all operations
- Involvement in external relationships (networks) which enhance the competitive capabilities

This Agreement requires the commitment of all employees to the principles of "Continuous Improvement" which is an integral part of Best Practice.

20—DISPUTE RESOLUTION

1) A procedure for the avoidance of disputes, questions or difficulties shall apply in the establishment covered by this Agreement.

The objectives of the procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of product and wages.

It is acknowledged that in some companies or sectors of the industry, disputes avoidance/settlement procedures are either now in place or in the process of being negotiated and it may be the desire of the immediate parties concerned to pursue those mutually agreed procedures.

2) In other cases, the following principles shall apply:

(a) Depending on the issues involved, the size and function of the plant or enterprise and the union membership of the employees concerned, a procedure involving up to four stages of discussion shall apply. These are:

(i) discussions between the employee/s concerned (and shop steward if requested) and the immediate supervisors;

(ii) discussions involving the employee/s concerned, the shop steward and the employer representative;

(iii) discussions involving representatives from the state branch of the union(s) concerned and the employer representative;

(iv) discussions involving senior union officials (state secretary) and the senior management representative(s);

(v) There shall be an opportunity or any party to raise the issue to a higher stage.

(b) There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earlier possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

(c) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.

(d) Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.

(e) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(f) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lockouts or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.

(g) The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practices at the workplace.

Signed for and on behalf of Howard Porter Pty Ltd.

Signature: (Signed) Colin Stewart

Name: COLIN STEWART

Position MANAGING DIRECTOR

Signed for and on behalf of the Automotive Food Metals Engineering Printing and Kindred Industries Union .

Signature: (Signed) J Sharp-Collett

Name: JOHN SHARP-COLLETT

Position STATE SECRETARY

PIONEER CONCRETE AGITATOR TRUCK DRIVERS AGREEMENT 1996.

No. AG 322 of 1996.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pioneer Concrete (WA) Pty Ltd

and

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

No. AG 322 of 1996.

COMMISSIONER J.F. GREGOR.

21 January 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. AG 322 OF 1996

HAVING heard Ms J. Dowling on behalf of the first named party and Ms R. McGinty 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 Pioneer Concrete Agitator Truck Drivers Agreement 1996, filed in the Commission on 26 November 1996, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,

[L.S.] Commissioner.

AGREEMENT

This Enterprise Agreement is made on the 21st day of November 1996 between:

PIONEER CONCRETE (WA) PTY LTD of 123 Burswood Road, Burswood, WA, (hereinafter referred to as "the Company") of the one part; and

THE TRANSPORT WORKERS UNION OF AUSTRALIA, WA BRANCH of 82 Beaufort Street, Perth, WA, (on behalf of the employees of the Company) of the other part.

THE PARTIES HERETO HEREBY AGREE as follows:

1. TITLE

This Agreement shall be known as the "Pioneer Concrete Agitator Truck Drivers Agreement 1996".

2. SCOPE AND STATUS

2.1 This Agreement applies to all employees of Pioneer Concrete (WA) Pty Ltd employed pursuant to the provisions of the Transport Workers (General) Award.

2.2 Where the provisions of this Agreement and the Award are inconsistent then the provisions of this Agreement shall prevail.

2.3 Upon registration this Agreement shall be binding upon an estimated 75 employees.

3. EXISTING FLEXIBLE WORK PRACTICES

The parties agree that the existing flexible work practices of which the Company has the benefit shall continue.

Those practices are:

3.1 Flexibility in the taking of R.D.Os.

3.2 Employees to perform de-dagging of agitators as requested.

3.3 Employees to perform cleaning in the yard and amenities as requested

3.4 Employees to drive existing vehicles on the basis that the Company's intention is to continue its fleet replacement program with a view to all vehicles being air-conditioned by 1998.

4. ROUTINE MAINTENANCE

The performance of routine non-expert truck maintenance which shall include but is not limited to cleaning the vehicle and checking the fluids and other matters contained in the drivers day sheet. Agitator rollers are to be greased once per week and, where facilities are available and training has been provided then truck tall shafts are also to be greased.

5. HEALTH & SAFETY

The parties acknowledge and accept the intention of the Company to continue to improve its health and safety performance. To assist with this improvement the employees agree to commit to continuously improve their own health and safety performance in the workplace and at each Health and Safety meeting discuss in detail all Lost Time Injuries, Medical Treated Injuries and Minor Injuries.

All safety equipment is to be supplied by the Company and worn by employees as necessary.

6. NON-CONFORMANCE REPORTS

The employees agree to reduce out of slump responses on concrete tests so that the Company can reduce its number of Non-Conformance Reports. This will be monitored during the life of the Agreement.

7. TRAINING

The Company remains committed to the continual training of all personnel so that their skills base can be enhanced, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

8. DISPUTE SETTLEMENT PROCEDURES

A procedure for the avoidance and settlement of industrial disputes shall apply to all operations covered by this Agreement.

The objectives of the procedures are to prevent disputes and to promote the resolution of disputes by measures based on

consultation, cooperation and discussion; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of production and wages.

The following principles shall apply:

8.1 A procedure involving the following three sequential stages of discussion/negotiation shall apply. These are:

8.1.1 discussions between the employee(s) concerned and at his/her request the union shop steward, delegates, and the immediate supervisors; and, in the event of the issue not being resolved.

8.1.2 discussions involving the employees(s), the shop steward(s) and more senior management; and, in the event of the issue not being resolved.

8.1.3 involving representatives from the State Branch of the union(s) concerned and the nominated employer representatives.

There shall be an opportunity for any party to raise the issue to a higher stage and status quo remains until all avenues are exhausted.

8.2 There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

8.3 Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.

8.4 Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.

8.5 Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall Jointly or individually refer the matter to the West Australian Industrial Relations Commission for assistance in resolving the dispute.

8.6 In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lock-outs or any other bans or limitations on the performance of work while the procedures of negotiation and conciliation are being followed and status quo shall apply.

8.7 The company shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practice at the workplace.

9. LUNCH BREAK

A flexible lunch break arrangement will apply, ie. employees will take their half hour lunch break when appropriate so as not to cause interruptions to delivery schedules. Under this clause employees will go onto overtime rates after they have completed 8.0 hours.

However if because of the workload a driver is unable to take a lunch break in the first 6.0 hours, then a half hour will be paid at overtime rates if the time card is endorsed "no lunch".

10. MEAL BREAK

In lieu of being paid a meal allowance of $4.90 and taking a break when a meal allowance is due as a result of working overtime the Company will increase the meal allowance to $12.00 in favour of the employee working through this period

11. BAG HANDLING ALLOWANCE

The parties agree that in compensation of the handling of bagged products used in the concrete batching process an additional payment will be made.

For bagged and packed product of weight greater than five (5) kg, a $1.50 per hour will be paid from the commencement of handling products. With a minimum of four (4) hours a $6.00 payment is applicable on any day.

12. FLEXIBLE START

Employees will be required to start work at any time between the hours of 5.30am and 7.00am. This flexibility in starting time will be implemented on a daily basis having regard for the needs of the plant concerned and the time of year.

13. TRAVELLING BETWEEN PLANTS

When it is necessary for any employee to travel temporarily on a daily basis from one plant to another then that employee will be paid the difference between their normal travel distance to work and the extra travel distance to another plant at the rate of $0.51 per kilometre each way

Having regard for the location of work in the Metro Area drivers will, from time to time, need to be permanently transferred from one plant to another as work conditions change. Permanent transfers between plants in the Metropolitan Area will be as per the award and subject to seven (7) days written notice. In these instances paragraph one of this clause does not apply.

14. NO FURTHER CLAIMS

There shall be no further claims during the life of this Agreement except for:

14.1 Increases flowing from National Wage Case decisions which are expressed to apply to Enterprise Agreements.

14.2 Site allowances and site conditions which apply for on-site batch plants.

14.3 Productivity increases and/or site allowances which are recoverable from the Principal and which are applicable across the concrete industry (ie those which are accepted and payable by all the major companies Boral, Readymix and Pioneer).

15. WAGE INCREASES

15.1 Wages shall be increased by 6% effective from 27th November 1996 to $500.61 per 40 hours.

15.2 Wages shall be increased by a further 6% effective from 20th December 1997 to $530.65 per 40 hours.

16. NOT TO BE USED AS PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as an example or precedent for other Enterprise Agreements whether they involve Pioneer Concrete (WA) Pty Ltd or not.

17. TERM

This Agreement has a term of two (2) years.

SIGNED for and on behalf of PIONEER CONCRETE (WA) PTY LTD in the presence of:) _____

.....*Signed*.....

SIGNED for and on behalf of THE TRANSPORT WORKERS UNION OF AUSTRALIA, WA BRANCH in the presence:) _____

.....*Signed*.....

RALPH M LEE PTY LTD (MAINTENANCE OPERATIONS) PORT HEDLAND ENTERPRISE BARGAINING AGREEMENT 1997
No. AG 58 of 1997.

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 58 of 1997.

Ralph M Lee Pty Ltd (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997.

SENIOR COMMISSIONER G.L. FIELDING.

4 March 1997.

Order.

HAVING heard Mr D.R. Sproule on behalf of the Applicant and Mr C. Young 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 19th day of February, 1997 entitled Ralph M Lee Pty Ltd (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

———

Schedule.

1.—TITLE

This Agreement shall be known as the Ralph M Lee Pty Ltd (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997.

IA.—NO EXTRA CLAIMS COMMITMENT

It is a condition of this Agreement that during its term, there shall be no extra claims on any of the items which have been agreed upon and are contained in this Agreement.

2.—ARRANGEMENT

1. Title
1A. No Extra Claims Commitment
2. Arrangement
3. Term
4. Area and Scope
5. General Conditions of Employment
6. Site Disability Allowance
7. Local Living Allowance
8. Rest and Recreation
9. Essential Works Procedure
10. Safety and Security Procedures
11. Drug & Alcohol Procedures
12. Dispute Settlement Procedure
13. Living Away From Home Allowance
14. Signatories

3.—TERM

This Agreement shall operate from the first pay period commencing on or after 1 November 1996 and shall continue in force for a period of two years.

4.—AREA AND SCOPE

This Agreement shall be binding upon—

(i) Ralph M Lee Pty Ltd.

(ii) The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch (CEPU).

(iii) Employees of Ralph M Lee Pty Ltd who are engaged on minor project work and preparatory work, maintenance, servicing, shutdown operations, modifications of plant and equipment and work incidental thereto at the Iron Ore facilities owned by BHP at Nelson Point and Finucane Island.

(iv) At the time this Agreement was entered into, there were approximately 40 employees engaged by Ralph M Lee Pty Ltd at the Iron Ore facilities owned by BHP at Nelson Point and Finucane Island.

5.—GENERAL CONDITIONS OF EMPLOYMENT

This Agreement is to be read in conjunction with—

(i) The Electrical Contracting Industry Award No.R22 of 1978.

(ii) The Ralph M Lee (WA) Pty Ltd Enterprise Bargaining Agreement 1996.

Where there is any inconsistency between this Agreement and either of the documents listed in Clause 5—General Conditions of Employment, this Agreement shall prevail to the extent of any such inconsistency.

6.—SITE DISABILITY ALLOWANCE

(i) A site disability allowance is specifically prescribed to compensate each employee for all disabilities associated with work within the scope of the Agreement and shall be paid in lieu of allowances (1) to (16) inclusive prescribed in Clause 18.—Special Rates and Provisions of the Electrical Contracting Industry Award No. R22 of 1978.

(ii) The site disability allowance shall be $2.50 for each hour worked.

7.—LOCAL LIVING ALLOWANCE

For those employees engaged locally, a local living payment of $230.00 per completed week of service is payable subject to the following conditions—

- Employees are required to produce evidence of local residency to the satisfaction of the employer.
- This payment does not apply to employees who receive from their employer accommodation expenses in lieu of full board and lodging, i.e. Living Away From Home Allowance.
- This payment is forfeited on a pro-rata basis in respect of any week in which the employee engages in any form of industrial action or is absent from work without authorisation.
- This payment is not payable on annual leave except where the employee satisfies the employer that the employee is still incurring costs within the area whilst on annual leave.
- This payment comes into effect from the first full pay period commencing after 1 November 1996.

8.— REST AND RECREATION

(a) Distant employees who qualify for rest and recreation leave in accordance with Clause 21.—Distant Work of the Electrical Contracting Industry Award R22 of 1978 shall have the period of continuous service on site reduced to 10 weeks in lieu of the Award prescription before being entitled to the leave. Time off and payment is in accordance with the abovementioned Award provision.

(b) Where the method of working the 38 hour week is such that a Rostered Day Off (RDO) accrues every 20th day, the RDO shall be paid for and taken concurrently with the period of R & R leave.

(c) Any period of employment in respect of which an employee has an unauthorised absence shall not count towards determining the employees rights to travel and leave under this subclause.

9.—ESSENTIAL WORKS PROCEDURE

Employees are committed to ensuring that there is an uninterrupted and continuous supply of labour when the respondents are carrying out the following works—

- shutdowns; and
- emergency services

once these works have commenced, provided it is safe to do so.

10.—SAFETY AND SECURITY PROCEDURES

(a) The employee shall comply with all safety regulations determined by the employer and/or BHP Iron Ore.

(b) An employee covered by this Order shall display or produce on request any form of personal identification issued for that purpose by the employer.

(c) Any employee who breaches safety or security regulations may be deemed to be guilty of misconduct.

11.—DRUG AND ALCOHOL POLICY

When completed, each employee and the Union shall commit to the immediate implementation of the Drug and Alcohol Policy which is currently being developed by agreement beween BHPIO and its employees.

12.—DISPUTE SETTLEMENT PROCEDURE

In such an event that there arises any question, dispute or difficulty pertaining to this Agreement, it shall be processed in accordance with Clause 27—of the Electrical Contracting Industry Award No. R22 of 1978.

13.—LIVING AWAY FROM HOME ALLOWANCE

(1) Where an employee is engaged or selected or advised by an employer to proceed to construction work at such a distance that he cannot return to his home each night and the employee does so, the employer shall provide the employee with suitable board and lodging or shall pay the expenses reasonably incurred by the employee for board and lodging. Expenses reasonably incurred by the employee for board and lodging shall equate to three hundred and sixty four dollars ($364.00) per week for the duration of this Agreement.

(2) The provisions of subclause (1) of this clause does not apply with respect to any period during which the employee is absent from work without reasonable excuse and in such case, where the board and lodging is supplied by the employer, he may deduct from monies owing or which may become owing to the employee an amount equivalent to the value of that board and lodging for the period of absence.

14.—SIGNATORIES

Signed for and on behalf of Ralph M Lee Pty Ltd

W. Manlow (Signed)	W. Manlow	14/2/97
Signature	Name of person authorised to sign (print)	Date
M.W. Appleton (Signed)	Michael Appleton	14/2/97
Witness Signature	Title (print)	Date

THE COMMON SEAL of Communications, Electrical, Electronic Energy, Information, Postal, Plumbing & Allied Workers Union, Engineering & Electrical Division, Western Australian Branch was hereunto affixed in the presence of:) **COMMON SEAL**

W. Game (Signed)	State Secretary	18/2/97
Signature	Title (print)	Date
David Leeder (Signed)	Research Officer	18/2/97
Witness Signature	Title (print)	Date

SCANWOOD INDUSTRIES INDUSTRIAL AGREEMENT.

No. AG 240 of 1996.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Scanwood Building Services Pty Ltd trading as Scanwood Industries.

No. AG 240 of 1996.

Scanwood Industries Industrial Agreement.

COMMISSIONER P E SCOTT.

20 February 1997.

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 Scanwood Building Services Industrial Agreement be registered on the 20th day of September 1996.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1. TITLE

This Agreement will be known as the Scanwood Industries 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. Pyramid Sub-Contracting
17. All-In Rates
18. Drug and Alcohol, Safety and Rehabilitation Program

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3. AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers (hereinafter referred to as the "Union") and Scanwood Building Services Pty Ltd trading as Scanwood Industries (hereinafter referred to as the "Company") in the State of Western Australia.

4. APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5. DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6. DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as 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 the 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 worker 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 calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers 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 (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14. SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off' principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/ re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15. SICK LEAVE

For sick leave accrued after the date of ratification of this agreement the following will apply:

(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 an employer has been paying an employee an all in-rate he/she 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 period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the employer 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 employer 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 PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlines in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Common Seal

(Signed)
ON BEHALF OF THE UNION

(Signed)
ON BEHALF OF THE COMPANY

Bjorn Houlayd
(PRINT NAME)

Dated this 4 day of September 1996.

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1996 Hourly Rate $	1 February 1997 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 PROGRAM

1. PRINCIPLE

People 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) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons 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/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker 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) A worker 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 program.
- 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 program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

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.

SCOTCH COLLEGE ADMINISTRATIVE AND TECHNICAL OFFICERS (ENTERPRISE BARGAINING) AGREEMENT 1996
No. AG 335 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Scotch College.

No. AG 335 of 1996.

Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1996

COMMISSIONER A.R. BEECH.

10 February 1997.

Order.

HAVING heard Ms T. Howe and Dr I. Fraser 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 Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1996 be registered in accordance with the following Schedule on and from the 10th day of February 1997.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Relationship to Parent Award
5. Scope of Agreement
6. Date and Duration of Agreement
7. Single Bargaining Unit
8. Objectives

9. Salary Rates
10. Conditions of Employment
11. Dispute Resolution Procedure
12. No Reduction Clause
13. Consultation
14. No Further Claims
15. No Precedent
16. Signatories
Appendix I

3.—PARTIES TO THE AGREEMENT

This agreement is made between Scotch College (the College) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the Independent Schools Administrative and Technical Officers Award 1993 (the award).

Where there is any inconsistency between this agreement and the award this agreement will prevail to the extent of the inconsistency.

5.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all staff who are employed within the scope of the Independent Schools Administrative and Technical Officers Award 1993.

(2) The number of employees covered by this agreement is 24.

6.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on and from the 10th February 1997 and shall apply until 30 September, 1997.

(2) The parties agree to meet no later than June 1997 to review this agreement.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the College and reached full agreement with the College represented by this agreement.

8.—OBJECTIVES

The nature and purposes of this agreement are to:

(1) Consolidate and further develop initiatives arising out of the award restructuring process.

(2) Re-affirm a mutual responsibility to maintain a working environment which will ensure that the College and its staff continue to be genuine participants and contributors to the College's aims, objectives and philosophy.

9.—SALARY RATES

(1) From the pay period commencing 30 September 1996 the current salary rates applying at the College shall be increased as per Appendix I.

(2) From the first pay period commencing on 31 March 1997 the salary rates prescribed in subclause (1) of this clause shall be increased by 5%, as per Appendix I.

(3) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the above increases.

(4) Above award payments currently applying shall be preserved as a percentage of the salaries prescribed herein.

10.—CONDITIONS OF EMPLOYMENT

(1) Professional Development

An employee shall be eligible to apply for up to 5 days per annum for relevant professional development without deduction of pay. Professional development approved by the College shall be fully funded by the College, including reimbursement of incidental expenses.

(2) Parental Leave

The College will grant parental leave in accordance with current minimum provisions as contained in the Australian Industrial Relations Act (1993).

(3) Superannuation

(a) All permanent employees may from the first pay period commencing in the tax year 1997/98, become contributing members (category B) and thereby pay 5.5% of their gross earning to the plan, with the College contributing a further 7.5% plus 3% productivity on their behalf. Members shall be able to "salary sacrifice" their contributions, in the same manner as "category A" members of the plan, as per the award.

(b) All employees agree that all superannuation contributions made on their behalf shall be paid into the Scotch College Superannuation Plan or "Concept 1" providing those Funds maintain eligibility as an "approved fund" in accordance with ISC regulations.

11.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this agreement.

The following procedure shall apply to the resolution of any dispute:

(1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.

(2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties, together with a representative if requested by either party.

(3) If the matter is not then resolved it may be referred to the Western Australian Industrial Relations Commission or the Industrial Relations Court of Australia.

12.—NO REDUCTION CLAUSE

Nothing contained herein shall entitle the College to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement.

13.—CONSULTATION

(1) There shall be established a Consultative Committee with equitable representation of employers and non-teaching staff from the College. The Committee shall provide a forum in which to discuss any matters brought to the Committee, provided they relate directly to the conditions of employment of non-teaching staff.

(2) Either party can call a meeting at a mutually convenient time.

(3) The steps and levels as described in the award shall be subject to a review by the joint employer/employee Consultative Committee with a view to eliminating anomalies and more clearly defining and delineating the responsibilities and duties that exist at the College—such review to be completed and any necessary re-classifications introduced on 1st July 1997.

(4) The parties agree to work together to develop an appraisal process.

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 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 College or not.

16.—SIGNATORIES

W R Dickinson

Scotch College

T.I. Howe

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

APPENDIX I

LEVEL SALARY	AWARD	SCOTCH CURRENT	30.9.96 +6.08%	31.3.97 +5%
Level 1	19334	19674	20870	21914
	19584	19934	21146	22203
	19834	20194	21422	22493
	20084	20454	21698	22782
	20334	20714	21973	23072
	20584	20974	22249	23362
Level 2	21334	21714	23034	24186
	21834	22274	23628	24810
	22334	22794	24180	25389
	22834	23314	24731	25968
	23334	23834	25283	26547
	23834	24354	25835	27126
Level 3	24834	25394	26938	28285
	25434	26018	27600	28980
	26034	26642	28262	29675
	26634	27266	28924	30370
	27234	27890	29586	31065
	27834	28514	30248	31760
Level 4	26334	26954	28593	30022
	27334	27994	29696	31181
	28334	29034	30799	32339
	29334	30074	31902	33498
	30334	31114	33006	34656
	31334	32154	34109	35814

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 1 OF 1996.

No. AG 23 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Roman Catholic Archbishop of Perth (Inc.)

No. AG 23 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Roman Catholic Archbishop of Perth (Inc) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 1918.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Roman Catholic Archbishop of Perth (Inc)

B.J. Hickey

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 2 OF 1996.

No. AG 24 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Congregational Superior Sisters of Mercy, West Perth Congregation

No. AG 24 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 2 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 2 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 2 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 2 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Congregational Superior Sisters of Mercy, West Perth Congregation and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 70.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	Salary ($)
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

T.I. Howe

The Congregational Superior Sisters of Mercy, West Perth Congregation

K.F. Bolwell

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly

basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 3 OF 1996.

No. AG 25 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Provincial Superior, Sisters of The Holy Family of Nazareth

No. AG 25 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
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23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Provincial Superior, Sisters of The Holy Family of Nazareth and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 22.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

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- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

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- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
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(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

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(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

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(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

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(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

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(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Provincial Superior, Sisters of The Holy Family of Nazareth

Sister Josita Paczhowski

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly

salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 5 OF 1996.

No. AG 26 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Institute of The Blessed Virgin Mary

No. AG 26 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Institute of The Blessed Virgin Mary and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 15.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

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- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

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(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

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(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

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(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

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The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

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(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

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(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

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Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

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(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

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(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

T.I. Howe

The Institute of The Blessed Virgin Mary

Leonie Peterson

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred

salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 6 OF 1996.

No. AG 27 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Congregation of The Missionary Oblates of Mary Immaculate Inc.

No. AG 27 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Congregation of The Missionary Oblates of Mary Immaculate Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 40.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	Salary ($)
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

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(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she is entitled or deemed to have been entitled and which would have been taken but for such termination.

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Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

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The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

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(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

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(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Congregation of The Missionary Oblates of Mary Immaculate Inc.

Peter Gerard Daly

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 7 OF 1996.

No. AG 28 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Roman Catholic Bishop of Bunbury

No. AG 28 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Roman Catholic Bishop of Bunbury and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 391.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

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In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Roman Catholic Bishop of Bunbury

Peter Quinn

SCHEDULE I.

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1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 8 OF 1996.

No. AG 29 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Servite College Council Inc.

No. AG 29 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Servite College Council Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 61.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

Servite College Council Inc.

Christopher Ross, O.S.M.

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly

salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 9 OF 1996.

No. AG 38 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Trustees of The Christian Brothers in WA Inc.

No. AG 38 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 1996 as filed by the parties on the 3rd day of February 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
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20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Trustees of The Christian Brothers in WA Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 241.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

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(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
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Step 3	29 149
Step 4	30 796
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Step 6	33 935
Step 7	35 249

Step	Salary ($)
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

T. I. Howe

The Trustees of The Christian Brothers in WA Inc

Br A. J. Shanahan

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 10 OF 1996.

No. AG 30 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Roman Catholic Bishop of Broome.

No. AG 30 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme
Schedule 3 Kimberley Region Remote Area Package

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Roman Catholic Bishop of Broome and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 126.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

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(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/fortnight (Married Rate)*
Balgo Hills	288.20
Beagle Bay	260.40
Billiluna	288.20
Broome	188.00
Derby	196.00
Gibb River	288.20
Halls Creek/Red Hill	246.00
Kununurra	246.00
La-djardar Bay	260.40
Lombadina	260.40
Mulan	288.20
Ringer Soak/Yaruman	288.20
Warmun	240.40
Wyndham	240.00
Yagga Yagga	288.20

Note: Fortnightly rates are determined at the married rate. Single rates are half of the married rate.

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Roman Catholic Bishop of Broome

Christopher Saunders

SCHEDULE I.

Conditions of Employment of Teachers in Catholic Schools in WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

SCHEDULE 3

KIMBERLEY REGION REMOTE AREA PACKAGE

This package introduces a set of allowances and conditions for teachers in schools in the Kimberley region.

1. AIR CONDITIONING REIMBURSEMENT

(a) An airconditioning reimbursement will be paid to teachers to defray electricity expenses incurred by the running of air conditioners during defined months.

(b) The airconditioning reimbursement is administered by the school.

(c) The airconditioning reimbursement is paid to teachers on presentation of a paid electricity account.

(d) The air conditioning reimbursement operates on the basis that any given town attracts a rebate based on set criteria e.g.

- prescribed months
- day and night
- electricity unit cost

For example, Broome is entitled to an air conditioning reimbursement for the months of October to April on both day and night criteria. The allocation of electrical units is 448 for day criteria and 672 for night criteria, a total of 1120 units. The rebate per unit of electricity is 12.29 cents.

(e) A married couple would receive the total reimbursement and a single employee half of this rate (based on two employees sharing accommodation) or a third of the reimbursement (based on three employees sharing accommodation).

Where the spouse of an employee is eligible to receive a similar reimbursement for air conditioning expenses through their employment, the teacher shall be eligible to receive reimbursement at the single rate.

On this basis the annual air conditioning reimbursement for a three bedroom house in Broome occupied by a married couple would be as follows;

1120 units x 7 months x 12.29 cents per unit

Total = $963.54/26.08 weeks = $36.95 fortnightly air conditioning reimbursement.

(f) The cost of the electricity per unit may differ from one location to another. The electricity unit cost that is being charged at each location has been utilised when determining the air conditioning reimbursement.

(g) The following table details the criteria applied in determining the air conditioning reimbursement.

Table One

		Night Criteria		Day Criteria	
Towns	Centre Status	Period	Months	Period	Months
Balgo Hills	Remote	Oct-Mar	6	Oct-Mar	6
Beagle Bay	Isolated	Oct-April	7	Oct-April	7
Billiluna	Remote	Oct-Mar	6	Oct-Mar	6
Broome	Town	Oct-April	7	Oct-April	7
Derby	Town	Oct-April	7	Sep-April	8
Gibb River	Isolated	Sep-May	9	Sep-May	9
Halls Creek/Red Hill	Town	Nov-Mar	5	Oct-April	7
Kununurra	Town	Oct-Mar	6	Sep-April	8
La-djardarr Bay	Isolated	Oct-April	7	Oct-April	7
Lombadina	Isolated	Oct-April	7	Oct-April	7
Mulan	Remote	Oct-Mar	6	Oct-Mar	6
Ringer Soak/ Yaruman	Remote	Oct-Mar	6	Oct-Mar	6
Warmun	Isolated	Oct-Mar	6	Sep-April	8
Wyndham	Town	Sep-May	9	Sep-May	9
Yagga Yagga	Remote	Oct-Mar	6	Oct-Mar	6

(h) The air conditioning reimbursement for the various locations throughout the Kimberley region are as follows.

Table Two

Towns	Centre Status	Married RateMarried rate
Balgo Hills	Remote	$31.66 per fortnight
Beagle Bay	Isolated	$36.94 per fortnight
Billiluna	Remote	$31.66 per fortnight
Broome	Town	$36.95 per fortnight
Derby	Town	$39.06 per fortnight
Gibb River	Isolated	$47.49 per fortnight
Halls Creek/Red Hill	Town	$31.66 per fortnight
Kununurra	Town	$36.95 per fortnight
La-djardarr Bay	Isolated	$36.95 per fortnight
Lombadina	Isolated	$36.95 per fortnight
Mulan	Remote	$31.66 per fortnight
Ringer Soak/Yaruman	Remote	$31.66 per fortnight
Warmun	Isolated	$36.95 per fortnight
Wyndham	Town	$47.49 per fortnight
Yagga Yagga	Remote	$31.66 per fortnight

It should be noted that:

(i) The rates above are married rates and these rates are halved or divided into thirds for single employees based on the number of occupants sharing the accommodation.

(ii) Part time staff receive pro rata reimbursement, dependent upon their part time fraction.

2. ELECTRICITY CHARGES

(a) In those locations where the electricity cost is higher than those charged in areas serviced by Western Power, the additional electricity costs in excess of the standard unit costs (over and above the air conditioning reimbursement) are met by the school.

For example, if the electricity costs in town A is 29.96 cents per unit and the standard rate of electricity from Western Power is 12.29 cents per unit, the school will then cover the difference of 17.67 cents per unit less the air conditioning component already met.

In other words, the school will pay its portion of the total electricity bill i.e. the number of electrical units used x 17.67 cents and then pass the outstanding amount on to the teacher for payment.

(b) In those locations where electricity is not charged, or is charged at a rate below that prescribed in Table Two, reimbursement for air conditioning will not apply.

3. LOCATION ALLOWANCES

(a) Location allowances are provided to offset the additional living expenses incurred in remote and isolated areas.

(b) The Kimberley region is categorised into three (3) zones:

Town Centre: Broome, Derby, Halls Creek, Wyndham and Kununurra.

Isolated Centre: Beagle Bay, Lombadina, Warmun and La-djardarr Bay

Remote Area: Balgo Hills, Mulan, Billiluna, Gibb River, Ringer Soak/Yaruman and Yagga Yagga.

(c) The allowances payable are those prescribed in Clause 14.—LOCATION ALLOWANCE of this Agreement.

4. TRANSPORTATION OF PERSONAL GOODS AND EFFECTS: RELOCATION REIMBURSEMENT

(a) Housing in isolated and remote zones is fully furnished, while housing in town zones is partially furnished. Therefore, the potential for the transportation of personal effects will be greater in town zones. It is for this reason that transport reimbursements are applied differentially to the three zones within the Kimberley region.

Table Four

ZONE	SINGLE	MARRIED
TOWN		
CEO Housing	10 Cubic Mtrs	20 Cubic Mtrs
Private Housing	15 Cubic Mtrs	30 Cubic Mtrs
ISOLATED	8 Cubic Mtrs	16 Cubic Mtrs
REMOTE	8 Cubic Mtrs	16 Cubic Mtrs

(b) This reimbursement applies to:

- teachers being appointed to the Kimberley region;
- teachers moving to another Kimberley location or out of the Kimberley region (after a two year period at the same school).

(c) Administration of the reimbursement of transportation costs will be undertaken by each school. The new appointee will arrange transportation of personal effects up to the prescribed amount as stated in Table Four and the account will be forwarded by the removalist to the school for payment. The cost for transported personal effects over and above the set allocation will be the responsibility of the employee.

(d) Where the spouse of an employee is eligible to receive reimbursement of relocation expenses through their employment, the teacher shall be eligible to receive reimbursement at the single rate or as negotiated between the employer and employee.

5. TRAVEL PROVISIONS

(a) **Travel on Appointment—**travel costs of the teacher and family (spouse and children, if applicable) to the Kimberley will be met by the school. Travel costs will be a standard economy airfare for the teacher (spouse and children, if applicable) or the cost of travel by road from the previous appointment, whichever is the lesser. Travel by road would include an allowance for kilometres travelled at the prescribed rates listed in Table Five.

(b) **Travel on Resignation—**travel cost of the teacher and family (spouse and children, if applicable) will be met on resignation, **provided that the teacher has completed two years at the school.** Travel costs will be the cost of a standard economy airfare for the teacher (spouse and children, if applicable) or the cost of travel by road to Perth or the new Kimberley appointment, whichever is the lesser. Travel by road would include an allowance for kilometres travelled at the prescribed rates listed in Table Five.

(c) **Annual Travel Concession**

(i) Air—a teacher and family (spouse and children, if applicable) are provided with an annual travel concession to Perth after 12 months service. The concession will provide standard economy airfare only.

(ii) Road—to add some flexibility to this provision teachers may choose to travel by road instead of by air. An allowance for the kilometres travelled would be applied.

Reimbursement shall apply to the kilometres travelled or the cost of the airfare(s) whichever is the lesser.

N.B. Concessions apply to those teachers (spouse and children, if applicable) if returning to the same school.

(d) The following reimbursement rates are for travel by Road:

Table Five **North of 23.5° South Latitude**

	Over 2600cc	Over 1600cc-2600cc	1600cc & Under
Rate per kilometre	50.5 cents	44.9 cents	39.2 cents

(e) Approval for road travel is at the discretion of the principal and payment for travel is to be made based on the following conditions.

- the journey is by the shortest practicable route.
- reimbursement does not exceed the cost of the airfare(s) of the teacher and their family.
- the reimbursement does not exceed the cost of the teacher's fare when the teacher's family travels by air.
- associated expenses, such as accommodation and meals, are at the expense of the teacher.

(f) Should a teacher wish to travel outside Western Australia, the equivalent standard economy airfare (including spouse and children, if applicable) will be payable to the teacher after producing to the principal alternative travel documentation.

If travel is to be undertaken by vehicle the equivalent road travel allowance to Perth will be paid.

6. TRANSPORTATION OF A MOTOR VEHICLE

One (1) motor vehicle will be transported at the school's expense from Perth to the school location on appointment or within the first six months after appointment. The transportation of one (1) motor vehicle back to Perth will also be provided for by the school upon resignation, provided that two consecutive years of service have been completed.

N.B.: *A motor vehicle will include cars, utilities and motor cycles but not include trailers, caravans, boats, commercial vehicles.*

7. FINANCIAL INCENTIVES

(a) The Financial Incentive is paid after three years of teaching in Kimberley schools.

(b) The Financial Incentives are paid at the rate applicable to the location at the time the incentive becomes due, regardless of service in previous Kimberley locations.

(c) The two year post graduate experience requirement has now been removed and a teacher will receive payment of the relevant Financial Incentive after three years teaching in Kimberley schools.

(d) A 5% indexation of previous rates will apply from 1 January 1996 and be reviewed every three (3) years. The new rates, as at 1 January 1996 to 31 December 1998, are shown in Table Six.

Table Six

No. of years completed	Town Centre	Isolated Town	Remote Area
	$	$	$
3	1050	1575	2205
3	1837	2730	3675
5 or more	2205	3255	4410

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 11 OF 1996.

No. AG 31 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Roman Catholic Bishop of Geraldton.

No. AG 31 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Roman Catholic Bishop of Geraldton and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 199.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10

Town	*Allowance $/week (Single Rate)*
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Roman Catholic Archbishop of Geraldton

J. J. Bianchini

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 12 OF 1996.

No. AG 32 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Sisters of Mercy Perth (Amalgamated) Inc.

No. AG 32 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 12 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 12 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 12 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 12 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Sisters of Mercy Perth (Amalgamated) Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 127.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
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Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

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20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

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The following criteria shall be applied prior to the implementation of flexible hours;

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(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

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(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

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Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

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(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

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(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

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In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

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ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Sisters of Mercy Perth (Amalgamated) Inc.

L. O'Brien RSM

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

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4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

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4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority to approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 13 OF 1996.

No. AG 33 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Trustees of The Marist Brothers Southern Province

No. AG 33 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Trustees of The Marist Brothers Southern Province and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 132.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

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(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

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(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

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Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

T.I. Howe

The Trustees of The Marist Brothers Southern Province

Br. J.E. Jolley

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A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

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The teacher is required to:

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DEFERRED SALARY SCHEME

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(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 14 OF 1996.

No. AG 34 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Norbertine Canons Incorporated.

No. AG 34 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

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Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Norbertine Canons Incorporated and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 56.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	Salary ($)
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Norbertine Canons Incorporated

Peter J. Stiglich

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 15 OF 1996.

No. AG 39 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

John XXIII College Council Inc.

No. AG 39 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 1996 as filed by the parties on the 3rd day of February 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
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8. No Extra Claims
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Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between John XXIII College Council Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 90.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

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On the expiration of this Agreement and in the absence of the registration of a subsequent Enterprise Agreement, the provisions of this Agreement shall prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

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It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

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This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
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Step 8	36 838
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Step 11	42 320
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(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
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Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
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Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

T.I. Howe

John XXIII College Council Inc.

G. Clune

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 16 OF 1996.

No. AG 35 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Congregation of Presentation Sisters WA Inc.

No. AG 35 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 16 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 16 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

———

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 16 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 16 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

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(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 79.

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This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

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On the expiration of this Agreement and in the absence of the registration of a subsequent Enterprise Agreement, the provisions of this Agreement shall prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

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This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

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- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
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The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

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(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

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(1) Payable on and from 1st January 1997—

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(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

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Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

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Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

(14) Accrued long service leave entitlements are portable between all Catholic schools in Western Australia and those schools subject to the Catholic Schools Long Service Leave Interstate Portability Agreement.

17.—PARENTAL LEAVE

The employer will grant parental leave to teachers in accordance with current minimum provisions as contained in the Industrial Relations Act 1988 (Commonwealth).

18.—REDUNDANCY PROVISIONS

(1) Should a position in a Catholic school become redundant then the provisions of

(a) the Industrial Relations Act 1988 (Commonwealth) and

(b) the Catholic Education Commission of Western Australia policy on redundancy shall apply.

(2) In calculating the years of service of a teacher, all continuous service within Catholic schools in Western Australia will be considered and not only the service completed at the current school.

(3) Where a school proposes to make one or more teaching positions redundant the employer shall make redundancy payments to the teachers made redundant in accordance with the following scale:

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks.

(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

21.—PROFESSIONAL DEVELOPMENT

Professional development has as its priority the upgrading of professional knowledge and skills.

Both the school and the teacher should share the responsibility of teachers' professional development.

In addition to courses provided in school hours, the parties accept that courses outside of school hours should be made available to teachers. Access to such courses should be at the discretion of the teacher.

22.—PROFESSIONAL RESPONSIBILITIES

(1) The parties recognise that there is a wide range of duties and responsibilities involved in the profession of teaching.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers:

(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Congregation of Presentation Sisters WA Inc.

Sr Anna Fewer

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It

should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

WESTERN AUSTRALIAN CATHOLIC SCHOOLS (ENTERPRISE BARGAINING) AGREEMENT No. 17 OF 1996.

No. AG 36 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Sisters of The Good Shepherd Inc.

No. AG 36 of 1997.

Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 17 of 1996.

COMMISSIONER A.R. BEECH.

11 February 1997.

Order.

HAVING heard Ms T. Howe and Mr P. Andrew 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 Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 17 of 1996 as filed by the parties on the 30th day of January 1997 as amended by the parties be registered on and from the 10th day of February 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 17 of 1996 and shall replace the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 17 of 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Relationship to Parent Award
6. Term of Agreement
7. Expiration of Agreement
8. No Extra Claims
9. No Duress
10. Objects of the Agreement
11. Conditions of Employment
12. Contract of Service
13. Salaries
14. Location Allowance
15. Promotional Positions
16. Long Service Leave
17. Parental Leave
18. Redundancy Provisions
19. Playground Duty
20. Flexibility in the School Day/Year
21. Professional Development
22. Professional Responsibilities
23. Dispute Avoidance and Grievance Procedure
24. Consultative Provisions
25. Signatures

Schedule 1 Conditions of Employment of Teachers in Catholic Schools in WA (1996)
Schedule 2 Deferred Salary Scheme

3.—PARTIES TO THE AGREEMENT

This Agreement is made between the Sisters of The Good Shepherd Inc. and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to all teachers who are covered by the provisions of the Independent Schools' Teachers' Award (1976), as amended.

(2) The number of teachers covered by this agreement is 7.

5.—RELATIONSHIP TO PARENT AWARD

Except as provided by this Agreement, the conditions of employment of teachers employed in Catholic Schools in Western Australia will be in accordance with the Independent Schools' Teachers' Award (1976), as amended.

6.—TERM OF AGREEMENT

This Agreement shall come into effect on and from the 10th February 1997 and shall expire on the 31st of December 1997.

7.—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 prevail for the purposes of the conditions of employment that will apply to employees covered by this Agreement.

8.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to salaries and conditions during the period of this Agreement unless they are consistent with the State Wage Fixing Principles.

9.—NO DURESS

This Agreement was not entered into by either of the parties under duress from the other party or any other person or persons.

10.—OBJECTS OF THE AGREEMENT

In reaching this agreement the parties have recognised:

Catholicity—

- The need to maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic education.

Professionalism—

- A mutual responsibility to protect, develop and enhance Catholic education within the State of Western Australia.
- The need to safeguard and enhance the quality of teaching and learning in Catholic schools in Western Australia and the public perception of it.

Flexibility—

- The variety of educational and managerial arrangements that exist requiring flexibility in the application of regulations that govern employment practices.
- The need to consolidate, and develop further, initiatives arising out of the award restructuring process.
- Productivity and efficiency have a growing influence in educational policies and practices.

  Schools are expected to do more with the same level of resources, necessitating productivity and efficiency improvements which may be qualitative rather than quantitative.

11.—CONDITIONS OF EMPLOYMENT

The parties acknowledge that the document at Schedule 1, *Conditions of Employment of Teachers in Catholic Schools in WA (1996)* is an official statement of the Catholic Education Commission of Western Australia and as such applies to all teachers employed in a Catholic school in Western Australia.

The parties are committed to discuss the ongoing development of the ethos and obligations expected of a teacher in a Catholic School, consistent with the objects of this Agreement.

12.—CONTRACT OF SERVICE

(1) When a teacher accepts an appointment within the Catholic system in Western Australia for the first time, the appointment is probationary and as such the teacher is subject to professional appraisal in the second year of employment so as to confirm ongoing employment.

(2) (a) Except in the case of a relief or temporary teacher, the termination of the service of a teacher shall require a minimum of six weeks' notice by either party to take effect from the close of school business at the end of the school term.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the teacher and the employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the teacher has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic education before such action is proceeded with.

13.—SALARIES

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(1) Payable on and from 1st January 1997—

Step	**Salary ($)**
Step 1	22 769
Step 2	24 102
Step 3	29 149
Step 4	30 796
Step 5	32 015
Step 6	33 935
Step 7	35 249
Step 8	36 838
Step 9	39 426
Step 10	40 638
Step 11	42 320
Step 12	43 763
Step 13	45 493

(2) Notwithstanding subclause (1) of this clause, Senior Teacher allowances remain payable by reference to Step 13 of the Award.

(3) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day. Half day is determined as the hours usually worked in a school prior to or immediately following the lunch break.

(4) From 1st of January 1997, teaching staff who have been employed within the Catholic system for a minimum of 2 years may apply to have their salary payments deferred in accordance with the provisions as outlined in Schedule 2 of this Agreement.

14.—LOCATION ALLOWANCE

Teachers shall be paid the allowance provided for below in lieu of the allowance prescribed in subclause (1) of Clause 17.—Location Allowances of the Award.

Town	*Allowance $/week (Single Rate)*
Balgo Hills	72.05
Boulder	6.60
Beagle Bay	65.10
Billiluna	72.05
Broome	47.00
Carnarvon	20.67
Derby	49.00
Esperance	12.69
Gibb River	72.05
Kalgoorlie	6.60
Karratha	49.60
Kununurra	61.50
La-djardar Bay	65.10
Lake Gregory	72.05
Lombadina	65.10
Port Hedland	46.26
Red Hill	61.50
Ringer Soak	72.05
Southern Cross	12.12
Tardun	8.92
Turkey Creek	65.10
Wyndham	60.00
Yagga Yagga	72.05

15.—PROMOTIONAL POSITIONS

(1) The parties are committed to immediately review the current structure and allowances that apply in both secondary and primary school promotion positions.

(2) Any agreed restructuring resulting from the review shall be implemented as soon as possible in 1997.

16.—LONG SERVICE LEAVE

(1) As from 1st January 1995, a teacher's entitlement to paid long service leave for each year of service within the Catholic Education system, will accrue at the following rates:

(a) up to ten years of continuous service, 1.3 weeks for each year of service;

(b) for each subsequent year, 1.86 weeks for each year of service.

(2) Subject to subclause (5) of this clause, a teacher who on or from the 1st day of January 1995 has accrued a minimum entitlement of ten weeks' long service leave shall be entitled to take such leave.

(3) For any service prior to the 1st January 1995, the provisions of long service leave shall be that which is prescribed under the terms of the Award.

(4) The process required for the taking of leave shall be as follows:

(a) the employer shall advise the teacher of his/her impending entitlement to take long service leave prior to the completion of term three in the year preceding the entitlement becoming due;

(b) the teacher shall advise the employer no later than the commencement of term four of the preceding year of their intention or otherwise to take leave;

(c) where an agreement has been reached for the taking of long service leave and circumstances arise that necessitates an adjustment of such leave, then any request for the adjustment shall not be unreasonably withheld.

(5) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

(6) The teacher continues to accrue long service leave entitlement for any period during which the teacher is absent on full pay from his/her duties, long service leave does not accrue for any period exceeding two weeks during which the teacher is absent on unpaid leave.

(7) (a) For the purposes of calculating long service leave entitlement the employer shall allow a break of service up to 6 months without penalty to the teacher. Such a break in service shall be deemed to be 'leave without pay' for the purposes of calculating that teacher's entitlement.

(b) The provisions of this subclause shall not prevail if a teacher has been paid a pro-rata payment for accrued long service leave at the time of the break of service.

(8) Vacation leave observed by the school shall count for the purposes of calculating a teacher's entitlement to long service leave.

(9) Any public holiday which occurs during the period a teacher is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(10) Where a teacher has become entitled to a period of long service leave in accordance with the clause, the teacher shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the teacher by one of the following options:

(a) as a semester, with approved leave without pay for that portion which exceeds the long service leave period;

(b) as a term, with the excess entitlement being paid for in addition to the ordinary payment for such leave.

(Notation: For the purposes of this subclause a semester is defined as a combination of the school terms 1 and 2 or 3 and 4 respectively.)

(11) Payment for long service leave shall be made in full before the teacher goes on leave or by agreement between the teacher and the employer, at the same time as the teacher's salary would have been paid if the teacher had remained at work in which case the payment shall be made by arrangement between the teacher and the employer.

(12) Where a teacher has completed at least 7 years' service and employment is terminated—

(a) by the teacher's death; or

(b) in any circumstances, other than serious misconduct;

the amount of leave shall be such as has accrued under the provisions of subclause (1) of this clause.

(13) In the case to which subclause (12) of this clause applies, and in any case in which the employment of the teacher who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the teacher and upon termination of employment by death pay to the personal representative of the teacher 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/she 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.

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(4) The parties agree to further negotiate the provisions as outlined in this clause during the term of this Agreement.

19.—PLAYGROUND DUTY

Where a teacher is required to perform playground supervision, such supervision shall be so rostered as to allow a fair and reasonable midday meal break.

20.—FLEXIBILITY IN THE SCHOOL DAY/YEAR

(1) Flexible working hours for teachers may be implemented at schools where an improved curriculum can be offered, or more effective and efficient use of resources occurs.

The following criteria shall be applied prior to the implementation of flexible hours;

(a) a consultative process to occur at school level involving all stakeholders, including the ISSOA, school decision making groups, parents, students and staff;

(b) issues such as duty of care, health, safety and welfare, equity and other legislative requirements allowed for;

(c) workloads and career aspirations have been considered;

(d) individual circumstances have been fairly and reasonably considered;

(e) the distribution of hours to be equitable.

(2) Specifically excluded from these flexibility arrangements are increased working hours for teachers.

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(a) Much of the life and culture of the school is derived from school activities involving teachers and students conducted outside regular classroom contact.

(b) The efforts of teachers who contribute significantly to the life and values of the school should be recognised.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the school.

(d) There will be collaborative planning between school and staff in the allocation of teachers to all activities conducted by the school.

(e) The competence, skills and qualifications of teachers, including part-time teachers, will be considered in the planning and allocating of activities conducted by the school, having regard for the teacher's professional development and family responsibilities.

(f) Some schools may have expanded educational programs which may require flexible employment arrangements.

(3) The parties are committed to discussing the implications of these principles in order to reach a common understanding in order to support their implementation.

(4) Nothing contained in this clause shall prevent a school from negotiating with a teacher or teachers, a procedure for the planning and implementation of the school's activities outside regular classroom contact. However, the parties recommend that it be done having regard to the principles outlined in this clause.

23.—DISPUTE AVOIDANCE AND GRIEVANCE PROCEDURES

(1) The objective of these procedures is the avoidance and resolution of industrial disputation by measures based on consultation, co-operation and negotiation.

(2) Without prejudice to either party, the parties to this Agreement shall ensure the continuation of work in accordance with the Award, this Agreement and the custom and practice in Catholic Schools in Western Australia.

(3) (a) In the event of any matter arising which is of concern, the teacher shall discuss this matter with the Principal or his/her nominee.

(b) If the matter is not resolved at this level, the teacher and/or the Principal may refer the matter to the Independent Schools Salaried Officers Association and/or the Catholic Education Office (Industrial and Community Relations Team).

(In an attempt to resolve the matter it may be necessary to have formal discussion between the ISSOA and the Director of Catholic Education in Western Australia.)

(c) If the matter cannot be resolved at this level it may be referred to the Western Australian Industrial Relations Commission.

(4) Nothing contained in this procedure shall prevent the Secretary of the ISSOA or his/her nominee or the Director of Catholic Education in Western Australia or his/her nominee from entering into negotiations at any level either at the request of any of the parties to the dispute or on their own initiative in respect of matters in dispute should such action be considered conducive to achieving resolution of the dispute.

24.—CONSULTATIVE PROVISIONS

In order to pursue the objectives as determined by both teachers and employers within Catholic schools, the parties have established a Collaborative Forum to determine, through discussion and consultation, the strategic industrial and professional priorities for teachers in the Catholic education system.

25.—SIGNATURES

ENDORSEMENTS

Signed for and on behalf of;

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

I.J. Sands

The Sisters of The Good Shepherd Inc.

G. Mitchell

SCHEDULE I.

CONDITIONS OF EMPLOYMENT OF TEACHERS IN CATHOLIC SCHOOLS IN WA (1996)

1. The Employing Authority

1.1 In Diocesan accountable schools, the teacher is employed by the Bishop of the Diocese who delegates this power to the school board.

1.2 In Order accountable schools the teacher is employed by the Congregational Leader who may delegate this authority to a school board or principal.

2. The Fundamental Responsibilities of the Teacher

A teacher is required, under the direction of the Principal, to contribute actively towards;

2.1 the maintenance of the Catholicity of the school through a manner of life and stated beliefs which are in keeping with the teachings of the Catholic Church;

2.2 the promotion of the religious instruction and formation of pupils in accordance with the directives and requirements of the Catholic Education Commission and the Bishop of the Diocese;

2.3 the undertaking of appropriate accreditation programs, as required.

3. Duties

The teacher is required to:

3.1 Perform such duties, teaching and non-teaching, as are customarily rostered and shared by all staff.

3.2 Help ensure the provision of a Catholic perspective in the activities of the school.

3.3 Model the leadership that is appropriate for all members of the school community.

3.4 Keep abreast of current developments in educational theory and practice.

3.5 Demonstrate a pastoral concern for each member of the school community.

4. Other Matters

4.1 A fulltime teacher shall, upon application to the principal, be permitted to engage in other employment provided that such employment does not affect the teacher's employment and professional responsibilities to the school.

4.2 Any fraudulent misrepresentation in the teacher's curriculum vitae, or other documentation presented to the employer, which impacts on the employment contract of the teacher may result in the termination of the employment contract.

4.3 The teacher has the responsibility to advise the employer of any previous or current criminal convictions or proceedings and acknowledges that the employer has the right to enquire about such convictions or proceedings, provided that the employer notifies the teacher of any inquiry prior to it being conducted.

SCHEDULE 2

DEFERRED SALARY SCHEME

(1) Eligibility.

(a) Teaching staff, who have been employed within the Catholic system for a minimum of two (2) years, including full time and part time teachers, are eligible to apply.

(b) Approval of applications will be determined by the employer based on the needs and requirements of the school.

(2) Period of Leave.

(a) The period of leave will be for twelve (12) months, from I January to 31 December.

(b) Participants will not be able to return to a position at the same school during the 12 month leave period.

(c) Should alternative employment be sought during the year of leave, the employee is to advise the employer.

(d) Should employment as a teacher be pursued within a Catholic school, only relief work may be undertaken by the teacher.

(e) The year of leave, the fifth year, will be taken in accordance with the conditions as prescribed within Clause 8—Leave (3), Leave Without Pay of the Independent Schools' Teachers' Award.

(3) Payment of Salary.

(a) During the four year accrual period participants in the scheme receive 80% of their normal fortnightly salary and will thus be taxed at this reduced rate of pay. Normal salary is defined as a teacher's normal fortnightly salary plus any associated teaching allowances.

In the fifth year, when leave is taken, the participants will receive the money contributed over the four year period. This amount can be paid fortnightly; in one lump sum payment; or two payments, one in each of the financial years.

(b) The participant will be taxed only on the amount actually received, in this case approximately 80% of the normal salary (including allowances). This is a significant taxation incentive for participants. It is recommended that, prior to entering into this scheme, prospective participants discuss taxation implications and other related issues with their accountant or financial adviser.

(c) It should be noted that interest is not paid on amounts accumulated during the accrual period. A taxation ruling prohibits such payment on the basis that people taking advantage of a taxation incentive cannot derive interest on those funds.

Interest accrued will be utilised to offset the administrative costs of the fund.

(4) Suspension of Contributions.

(a) Participation in the scheme will be suspended during any period of unpaid leave. Any period of unpaid leave will reduce payments into the fund and therefore proportionately reduce the accrued payment in the year of leave.

(b) A participant may elect to suspend contributions for a period of less than twelve months once (1) during the accrual period. This will also reduce the accrued payment in the year of leave.

(c) The employer retains the discretionary authority **to** approve suspension for a period of twelve (12) months at the request of the employee. Such a suspension will extend the taking of the year of leave by one (1) year.

(5) Withdrawal

(a) The participant may withdraw from the scheme at any time by notifying the employer in writing. It should be noted that only the exact money paid into the scheme will be paid in a lump sum on withdrawal and no interest will be paid on this amount.

(b) The participant who withdraws from the scheme will be taxed on the lump sum payment and any other salary received during that financial year. Significant taxation implications may, therefore, apply.

(6) Long Service Leave, Sick Leave and Increment Entitlements.

(a) A participant in the scheme will accrue the above entitlements at 100% of the normal accrual rate over the first four years only. The fifth year, the year of leave, is a non-accrual period.

(b) If a participant becomes eligible for long service leave during the fourth year of the deferred salary scheme, the long service leave entitlement will further be deferred and taken in the fifth year of the scheme or taken in the final term/semester of the fourth year of the scheme, or the first term/semester of the sixth year.

(7) Workers' Compensation.

(a) Participants in the scheme are covered by workers' compensation during the first four years of the scheme at 100% of their normal salary. A participant in receipt of workers' compensation during the first four years may elect to continue in the deferred salary scheme or suspend their contributions until their return to full duties.

(b) Any period of suspension due to workers' compensation shall be undertaken in accordance with Clause 4 of this Schedule.

(c) During the fifth year, the year of leave, the participant is not covered by workers' compensation.

(8) Superannuation.

Contributions are based on 100% of the employee's normal salary over the first four years only.

(9) Fund Management.

The scheme will be managed by the Catholic Education Office. During the four year accrual period, schools will remit 20% of salary foregone to the Office on a two or four weekly basis. Participants will receive a statement from the Office at the end of each year showing the amount accumulated in the scheme. At the beginning of the fifth year, when leave is taken, the accumulated amount will be forwarded to the participant's school for payment through the school's payroll. All contributions to the scheme are guaranteed by the Catholic Education Office of WA.

(10) Portability

(a) Teachers are able to maintain their participation in the scheme should they transfer their employment between Catholic schools or to the Catholic Education Office.

(b) The employee is obliged to notify the principal prior to appointment of their participation in the Deferred Salary Scheme and the date that leave is due to be taken.

(c) Participation in the Deferred Salary Scheme shall not impede an application for employment in a Catholic school.

(11) Implementation Date

(a) The Deferred Salary Scheme shall commence on or after I January 1997.

(b) Applications are to be forwarded to the Principal by the close of business 31 August of the year prior to the year of commencement. Schools will endeavour to notify the teacher of the result of their applications by 31 October of the same year.

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989.

No. PSA A3 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Civil Service Association of Western Australia Incorporated

and

Albany Port Authority & Others.

No. P0002 of 1997.

Government Officers Salaries, Allowances and Conditions Award 1989.

COMMISSIONER J.F. GREGOR.

19 February 1997.

Order.

HAVING heard Ms F Bajrovic on behalf of the first named party and Mr J Lang 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 Government Officers Salaries, Allowances and Conditions Award 1989, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 19 February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

———

Schedule.

Clause 38.—Relieving Allowance. Delete paragraph (d) of subclause (1) of this clause and insert in lieu thereof the following:

(d) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $123.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $123.00 in any one period of three (3) years.

———

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988

No. PSA A20 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Civil Service Association of Western Australia Incorporated

and

Disability Services Commission

No. P0003 of 1997.

Government Officers (Social Trainers) Award 1988

COMMISSIONER J.F. GREGOR.

19 February 1997.

Order.

HAVING heard Ms F Bajrovic on behalf of the first named party and Mr J Lang 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 Government Officers (Social Trainers) 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 19 February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

———

Schedule.

Clause 25.—Miscellaneous Allowance. Delete paragraph (d) of subclause (6)—Relieving Allowance of this clause and insert in lieu thereof the following:

(d) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $123.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $123.00 in any one period of three (3) years.

———

PUBLIC SERVICE AWARD 1992

No. PSA A4 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Civil Service Association of Western Australia Incorporated

and

Commissioner, Aboriginal Affairs & Others.

No. P0001 of 1997.

Public Service Award 1992.

COMMISSIONER J.F. GREGOR.

19 February 1997.

Order.

HAVING heard Ms F Bajrovic on behalf of the first named party and Mr J Lang 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 Public Service 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 19 February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

———

Schedule.

Clause 38.—Relieving Allowance. Delete subclause (4) of this clause and insert in lieu thereof the following:

(4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $123.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $123.00 in any one period of three (3) years.

AWARDS/AGREEMENTS—Variation of—

ABORIGINAL MEDICAL SERVICE EMPLOYEES' AWARD No. A26 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Broome Regional Aboriginal Medical Service and Others.

No. 130 of 1996.

COMMISSIONER C.B. PARKS .

28 February 1997.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondents, and Ms R. Sackville on behalf of the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch (Intervenor) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Aboriginal Medical Service 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 14 February 1997.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu thereof—

2.—ARRANGEMENT

1. Title
1A. Statement of Principles —August 1996
2. Arrangement
3. Area and Scope
4. Definitions
5. Contract of Employment
6. Hours of Duty, Overtime and On Call
7. Relieving
8. Annual Leave and Public Holidays
9. Long Service Leave
10. Sick Leave
11. Compassionate Leave
12. Maternity Leave
13. Study Leave and Orientation
14. Transport
15. Transfers and Distant Appointments
16. Accommodation
17. Part Time Employees and Casuals
18. Laundry and Uniforms
19. Payment of Wages
20. Time and Wages Records
21. Interviews and Notices
22. No Reduction
23. District Allowance
24. Outpost—Availability Allowance
24A. Bilingual Allowance
25. Special Leave
25A. Emergency Leave
26. Wages
27. Dispute Settling Mechanism
28. Award Modernisation and Enterprise Consultation
29. Review of Career Structure

Schedule A—Parties to the Award
Schedule B—Respondents

2.Clause 4.—Definitions: Delete this clause and insert in lieu thereof—

4.—DEFINITIONS

(1) (a) "Health Worker (Uncertificated) Grade 1, Level 1" shall mean an employee who does not possess any relevant qualification or possess any experience in health care services. This employee will gain workplace experience and/or commence training towards Certification level. The work may include but is not limited to:

Aboriginal Health
Environmental Health
Aged Care
Counselling
Liaison
Mental Health
Alcohol Care/Rehabilitation
HACC

(b) "Health Worker Grade 1, Level 2" shall mean an employee who possesses a relevant Certification of which the course content is less than 12 months duration in total. The work may include but is not limited to:

Aboriginal Health
Environmental Health
Aged Care
Counselling
Liaison
Mental Health
Alcohol Care/Rehabilitation
HACC

(c) "Health Worker Grade 2" shall mean an employee who provides a broad range of direct primary health care services and is able to work without direct supervision and/or an employee who possesses a Certificate with Medication Certificate Grade 1 and/or Advanced Certificate of which the course content covered a 12 month period or equivalent, from an accredited education provider in a relevant field, and/or is an Enrolled Nurse. The work may be, but is not limited to:

Aboriginal Health
Environmental Health
Aged Care
Counselling
Liaison
Alcohol Care/Rehabilitation
HACC

(d) "Health Worker Grade 3" shall mean an employee who has a highly developed knowledge, skill and capacity for self directed application and is involved in the delivery of primary care, and this may involve supervision of others involved in primary care, and/or possesses a degree by an accredited training provider in the field of Aboriginal Health, and/or a Medication Certificate Grade 2. The work may include but is not limited to:

Aboriginal Health
Environmental Health
HACC
Counselling
Health Promotion
HIV/STD Co-ordination
Health Education
Alcohol Care/Rehabilitation
Mental Health
Nutritional Health

Such work shall be the provision of primary care or the supervision of work of a manual or domestic nature or of primary care.

(e) "Health Worker Grade 4, Level 1" shall mean an employee, at a level higher than that at Health Worker Grade 3, who delivers primary care in a specialist health service area which shall include but is not limited to Mental Health, Health Promotion, Health Education, Heart Health or Remote Area Health and who is required to hold a qualification from an accredited training provider in the field of Aboriginal Health.

(f) "Health Worker Grade 4, Level 2" shall mean an employee who is principally responsible for regional health co-ordination, or the supervision of others delivering primary care in specific projects and who is required to hold a qualification from an accredited training provider in the field of Aboriginal Health.

(g) The following or similar groups or classes or classifications, however so called are exempted from coverage of this award: social security officers; community services officers; welfare officers; social workers; counsellors; community development officers; public relations officers; craft workers and trainers; managers; advisers; treasurers; accountants; secretaries; stenographers; typists; clerical officer and clerical assistants; receptionists; telephonists; bookkeepers; assistant bookkeepers; cashiers; office co-ordinators; office supervisors; administrative officers; computer operators; liaison officers, HACC co-ordinators.

(2) "Accrued Day Off" means the paid day off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 6.—Hours of Duty, Overtime and On Call, in this award.

(3) "Union" shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union.

(4) "HACC" shall mean the Home and Community Care programs.

(5) "Health Worker" shall mean any employee who is employed in the delivery of primary care to clients of Aboriginal Medical Services, excluding Registered Nurses and Medical Officers.

3. Clause 26.—Wages: Delete this clause and insert in lieu thereof—

26.—WAGES

The minimum weekly rate of wage payable to employees covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder:

	Base Rate Per Week $	1st, 2nd & 3rd Arbitrated Safety Net Adjustments Per Week $	Total Per Week $
(1) (a) Health Worker Grade 1, Level 1			
1st six months of employment	383.70	24.00	407.70
2nd six months of employment	388.20	24.00	412.20
2nd year of employment	397.00	24.00	421.00
3rd year of employment	405.50	24.00	429.50
(b) Health Worker Grade 1, Level 2			
1st year of employment	409.80	24.00	433.80
2nd year of employment	414.20	24.00	438.20
3rd year of employment	423.40	24.00	447.40
5th year of employment	437.06	24.00	461.06
(2) Health Worker Grade 2			
1st year of employment	437.06	24.00	461.06
2nd year of employment	457.77	24.00	481.77
3rd year of employment	477.90	24.00	501.90
4th year of employment	512.90	24.00	536.90
6th year of employment	537.40	24.00	561.40
8th year of employment	561.40	24.00	585.40
(3) Health Worker Grade 3			
1st year of employment	512.90	24.00	536.90
2nd year of employment	537.40	24.00	561.40
3rd year of employment	561.40	24.00	585.40
5th year of employment	570.40	24.00	594.40
6th year of employment	603.84	24.00	627.84
8th year of employment	650.40	24.00	674.40
(4) (a) Health Worker Grade 4, Level 1			
1st year of employment	650.40	24.00	674.40
2nd year of employment	675.40	24.00	699.40
3rd year of employment	706.90	24.00	730.90
4th year of employment	766.78	24.00	790.78
6th year of employment	805.12	24.00	829.12
(b) Health Worker Grade 4, Level 2			
1st year of employment	706.90	24.00	730.90
2nd year of employment	766.78	24.00	790.78
3rd year of employment	805.12	24.00	829.12
5th year of employment	865.38	24.00	889.38

(5) Junior Employees: Junior employees shall receive the following percentage of the 1st year rate:

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

(6) (a) The ordinary rate of wage prescribed in subclause (1) hereof shall be increased by $8.60 per week when a registered enrolled nurse has obtained a post basic certificate approved by the Nurses Board of Western Australia and he/she is required to use the knowledge gained in that certificate as part of his/her employment.

(b) The ordinary rate of wage prescribed in subclause (1) hereof shall be increased by $6.90 per week when a registered enrolled nurse becomes proficient to do work deemed extraordinary by the employer or the Western Australian Industrial Relations Commission.

(c) The on call allowance shall be paid to health workers for each on call period they are rostered to.

(7) Any employee who has passed the examination for registration prescribed by the Nurses Board of Western Australia shall, for the purposes of this clause, be deemed to be an enrolled nurse.

(8) Supervisory Allowance

A health worker Grade 1 or Grade 2 who is appointed to supervise other employees and to be responsible for the operation of a clinic, health unit or outpost shall be paid an hourly allowance based on the ordinary wage prescribed for the classification in which they are employed increased by 4.5%.

(9) Where an enrolled nurse is engaged as a health worker and that enrolled nurse wishes to maintain their enrolled nurse registration, the employer shall provide work in a nursing situation each year to enable them to maintain their registration with their nurses' board.

(10) Specialist Allowance

Where a health worker is performing specialist duties, for example has responsibility for a special project or program, which require independent application of a high level of theoretical or specialist knowledge, that health worker shall be paid an allowance equal to 7% of the Health Worker Grade 4 Level 1, 1st year of employment for the period that worker is exercising those skills.

	Base Rate Per Week	1st, 2nd & 3rd Arbitrated Safety Net Adjustments Per Week	Total Per Week
	$	$	$
(11) Gardener			
1st year of employment	374.60	24.00	398.60
2nd year of employment	379.60	24.00	403.60
3rd year of employment and thereafter	383.80	24.00	407.80
(12) Domestic			
1st year of employment	374.60	24.00	398.60
2nd year of employment	379.60	24.00	403.60
3rd year of employment and thereafter	383.80	24.00	407.80
(13) Cook			
1st year of employment	394.90	24.00	418.90
2nd year of employment	399.20	24.00	423.20
3rd year of employment and thereafter	403.30	24.00	427.30
(14) Driver of Motor Vehicle (under 1.2 tonnes)			
1st year of employment	394.80	24.00	418.80
2nd year of employment	398.60	24.00	422.60
3rd year of employment and thereafter	401.70	24.00	425.70
(15) Driver of Motor Vehicle (exceeding 1.2 tonnes capacity but not exceeding 3 tonnes capacity)			
1st year of employment	399.10	24.00	423.10
2nd year of employment	402.80	24.00	426.80
3rd year of employment and thereafter	406.00	24.00	430.00
(16) Bus Driver (under 25 passengers)			
1st year of employment	401.20	24.00	425.20
2nd year of employment	404.90	24.00	428.90
3rd year of employment and thereafter	408.10	24.00	432.10
(17) Storeperson (Grade 1)			
1st year of employment	388.90	24.00	412.90
2nd year of employment	392.80	24.00	416.80
3rd year of employment and thereafter	396.20	24.00	420.20

(18) Leading hands shall be paid the ordinary wage prescribed for the classification in which they are employed increased by:

(a) $13.90 per week when in charge of not less than three and not more than 10 other employees;

(b) $20.90 per week when in charge of more than 10 and not more than 20 other employees; and

(c) $27.80 per week when in charge of more than 20 employees.

(19) 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.

(20) Where the term "year of employment" has been used in this clause, it shall mean all service whether full time or part time and shall include service of an equivalent nature in any Aboriginal Health Organisation.

Such service shall be calculated in periods of calender years from the date of commencement of work with the employer and by automatic progression subject to satisfactory service.

(21) When an employee transfers from one grade or level to another, the employee shall be placed at the next highest rate of pay from the wage they were previously receiving and subclause (20) of this clause shall not apply in these circumstances.

4. Insert after Clause 24.—Outpost—Availability Allowance, the following new clause—

24A.—BILINGUAL ALLOWANCE

(1) Bilingual shall mean a recognised proficiency in English as well as any one of the Aboriginal or Torres Strait Islander languages.

(2) In recognition of the increased effectiveness and productivity of bilingual employees, if an employee is required during the course of employment or as part of his/her duties to apply skills within subclause (1) of this clause, the employee who shall be competently bilingual shall be paid an allowance of:

Level 1—$1018.00 per annum.

Level 1 is an elementary level. This level of accreditation is appropriate for employees who are capable of using a minimal knowledge of language for the purpose of simple communication.

Level 2—$2038.00 per annum.

Level 2 represents a level of ability for the ordinary purposes of general business, conversation, reading and writing.

(3) The amounts contained in subclause (2) of this clause represent the total possible amount an employee could be paid in one year. The bilingual allowance is payable weekly or fortnightly according to Clause 19.—Payment of Wages.

(4) This allowance shall be paid to part time employees on a pro rata basis.

5. Insert after Clause 25.—Special Leave, the following new clause—

25A.—EMERGENCY LEAVE

An employer may, under exceptional circumstances, grant leave to an employee on such terms and conditions as the employer, exercising their discretion sees fit.

An employer may grant leave without pay after a period of 12 months service to an employee for a maximum period of 12 months.

6. Clause 14.—Transport: Delete this clause and insert in lieu thereof—

14.—TRANSPORT

(1) No employee shall be required to provide and maintain a vehicle for the purposes of the employer's business however, where there is an agreement between the employer and employee to the use of the employee's vehicle an allowance shall by paid in accordance with the agreement or award relating to officers of the Public Service.

(2) Full time or part time employees employed in any location referred to in paragraphs 3.,4., 5., and 6. of subclause (2) of Clause 23.—District Allowance of the Award, shall be entitled to:

(a) in the case of full time employees, 38 hours annual leave in addition to that prescribed in Clause 8.—Annual Leave and Public Holidays or in the case of part time employees one week's annual leave in addition to that prescribed in Clause 8.—Annual Leave and Public Holidays, calculated on the basis of average weekly number of hours worked over the previous 12 months, and

(b) one return economy class air ticket to Perth per annum, or, by agreement between the employer and the employee, the equivalent in money of one return economy class airfare to Perth, provided that the employee shall receive such air ticket or money as the case may be, before the employee commences leave.

(c) An entitlement under this subclause not exercised by an employee in any year, shall only accrue from one year to the next, and be exercisable in any subsequent year by agreement between the employer and the employee provided that where in any year the employer and the employee have not agreed when the employee is to take his/her leave under paragraph (a) of this subclause or entitlement under paragraph (b) of this subclause, the employer is not to refuse the employee taking, at any time suitable to the employee, such entitlements under this clause subject to the employee giving to the employer at least 4 weeks notice.

(d) Nothing in this award shall be deemed to prevent an employee using accrued entitlements as set out in paragraph (c) of this subclause for members of that employees family.

7. Insert after Clause 28.—Award Modernisation and Enterprise Consultation, the following new clause—

29.—REVIEW OF CAREER STRUCTURE

The parties agree to review the Career Structure as set out in Clause 4.—Definitions and Clause 26.—Wages, with a view to ensuring that the structure remains relevant to the enterprises and meets the career aspirations of the employees. The parties agree that the review/s will be conducted jointly.

AGED AND DISABLED PERSONS HOSTELS AWARD, 1987.

No. A6 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anglican Homes for the Aged (Inc) and Others.

No. 1317(A) of 1996.

Aged and Disabled Persons Hostels Award, 1987.

No. A6 of 1987.

CHIEF COMMISSIONER W.S. COLEMAN.

20 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT this application be split into Parts (A) and (B). Further, that the provisions for Fares and Motor Vehicle Allowances will be dealt with under part (B) at a later stage following further discussions between the parties.

(2) THAT the Aged and Disabled Persons Hostels Award, 1987 be varied in accordance with the following Schedule and that such variation being made in relation to:

(a) paragraph (1) of the Schedule in accordance with Consumer Price Index adjustments, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 7, subgroup "Meals Out & Takeaway Foods" for September 1991 and September 1996 inclusive;

(b) paragraph (2) and (3)(b) of the Schedule in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case (print M9765), based on the key classification of Qualified Cook;

(b) paragraph (3)(a) of the Schedule in accordance with a 1.1% increase in the Consumer Price Index adjustment for the quarters September 1991 to September 1996 inclusive, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 6, subgroup "Clothing";

and these variations shall have effect from the first pay period commencing on or after the 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 10.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $6.60.

2. Clause 18.—Wages: Delete the amount of $14.20 in subclause (3) and insert in lieu thereof the amount of $14.90.

3. Clause 20.—Uniforms and Laundering:

A. Delete the amount of $3.40 in subclause (2) and insert in lieu thereof the amount of $3.45.

B. Delete the amount of $1.00 in subclause (4) and insert in lieu thereof the amount of $1.05.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anglican Homes for the Aged (Inc) and Others.

No. 1317(A) of 1996.

Aged and Disabled Persons Hostels Award, 1987.

No. A6 of 1987.

CHIEF COMMISSIONER W.S. COLEMAN.

5 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 20 February 1997, the following correction is made—

1. Delete instruction (1) of the Order and replace with the following:

1. Clause 10.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $5.80.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

AMBULANCE SERVICE COMMUNICATION CENTRE EMPLOYEES' AWARD 1991 No. A 4 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

St John Ambulance Australia.

No. 1532 of 1996.

Ambulance Service Communication Centre Employees' Award 1991.

COMMISSIONER J.F. GREGOR.

14 February 1997.

Order.

HAVING heard Ms R. Ho on behalf of the first named party and Mr M. O'Connor 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 Ambulance Service Communication Centre Employees' Award 1991, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 14 February 1997.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

Schedule.

1. Clause 8.—Overtime: Delete the amount of $5.15 in paragraph (a) and (b) of subclause (3) of this clause and insert in lieu thereof the amount of $6.77.

2. Clause 27.—Training Allowance: Delete the amount of $2.00 in this clause and insert in lieu thereof the amount of $2.30.

AWU GOLD (MINING AND PROCESSING) AWARD 1993 No. A1 of 1992.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Kalgoorlie Consolidated Gold Mines Pty Ltd and Others.

No. 1797 of 1996.

AWU Gold (Mining and Processing) Award 1993.

COMMISSIONER R.N. GEORGE.

21 February 1997.

Order.

HAVING heard Mr M. Lourey on behalf of the Applicant and Ms T. Allen 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 AWU Gold (Mining and Processing) Award 1993 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 February 1997.

(Sgd.) R.N. GEORGE,
[L.S] Commissioner.

Schedule.

1. Clause 7.—Shift Work: Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) A shift employee, in addition to that employee's ordinary rate of pay, shall be paid an additional flat payment of $8.50 per rostered afternoon or night shift.

2. Clause 16.—Wage Rates: Delete this clause and insert in lieu thereof the following—

16.—WAGE RATES

(1) Underground

	Base Rate	Industry Allowance	Arbitrated Safety Net Adjustment	Total Weekly Mininum Rate
	$	$	$	$
Group 1				
Trucker Toolcarrier Salvage Man Pass Runner	298.80	66.30	24.00	389.10
Group 2				
Pipe Sampler Sampler Popper Machineman Diamond Drillers Assistant Air Hoist Operator Ventilation Man Pump Attendant (as distinct from Pumpman) Hydraulic Fill Operator	312.60	66.30	24.00	402.90
Group 3				
Platelayer Train Crew Mechanical Loader Operator Scraper Hauler Operator Braceman	317.80	66.30	24.00	408.10
Group 4				
Scaler Pumpman (engaged dewatering a mine)	322.60	66.30	24.00	412.90
Group 5				
Rock Drill Man in other places Rock Bolter Powder Monkey Percussion Drill Operator Sanitary Man Crusher Operator	330.60	66.30	24.00	420.90
Group 6				
Rock Drill Man in Rises Rock Drill Man in Winzes Raise Drill Operator In-The-Hole-Hammer Operator Diamond Driller up to 15kw Timberman	339.40	66.30	24.00	429.70
Group 7				
Rock Drill Man in Shaft Timberman in Shaft Diamond driller over 15kw	347.70	66.30	24.00	438.00

	Base Rate	Industry Allowance	Arbitrated Safety Net Adjustment	Total Weekly Mininum Rate
	$	$	$	$
Group 8				
Diesel Truck and Loader Operator Diesel Personnel Carrier Operator	353.80	66.30	24.00	444.10
Group 9				
Hydraulic Jumbo Drill Operator	366.50	66.30	24.00	456.80
(2) (a) Mining—Open Cut				
Mine Employee—Grade 1 Labourer Spotter Sampler	299.70	66.30	24.00	390.00
Mine Employee—Grade 2 Blast Crew Trainee—Mobile Plant Operator Serviceman Production Driller	322.10	66.30	24.00	412.40
Mine Employee—Grade 3 Trained—Mobile Plant Operator Serviceman Production Driller	362.30	66.30	24.00	452.60
Mine Employee—Grade 4 Shot Firer Skilled—Mobile Plant Operator Serviceman Production Driller	371.90	66.30	24.00	462.20
Mine Employee—Grade 5 Multiskilled	385.40	66.30	24.00	475.70
(b) Ore Processing				
Process Operator —Grade 1	292.00	66.30	24.00	382.30
Process Operator —Grade 2	309.00	66.30	24.00	399.30
Process Operator —Grade 3	325.50	66.30	24.00	415.80
Process Operator —Grade 4	341.30	66.30	24.00	431.60
Process Operator —Grade 5	371.90	66.30	24.00	462.20
Laboratory				
Laboratory Employee—Grade 1	292.00	66.30	24.00	382.30
Laboratory Employee—Grade 2	309.00	66.30	24.00	399.30
Laboratory Employee—Grade 3	325.50	66.30	24.00	415.80
Laboratory Employee—Grade 4	341.30	66.30	24.00	431.60
Laboratory Employee—Grade 5	371.90	66.30	24.00	462.20
(c) Mine Services Employees (MSE)				
MSE—Grade 1	299.70	66.30	24.00	390.00
MSE—Grade 2	316.30	66.30	24.00	406.60
MSE—Grade 3	332.50	66.30	24.00	422.80

(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, the March 1996 State Wage Decision and the August 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.

(4) Leading Hands

In addition the wage rates an employee appointed as a Leading hand shall be per week, the following in excess of the highest wage rate applicable to the work being carried out—

(a) In charge of not less than three and not more than ten other employees	$15.10
(b) In charge of more than ten and not more than twenty other employees	$22.80
(c) In charge of more than twenty employees	$29.60

(5) W.A. Industrial Relations Commission General Order—Adult Minimum Wage

Notwithstanding the provisions of this award no employee, 21 years of age or over, shall be paid less than $332.00 per week for the ordinary hours of work prescribed by this award. Where the minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed in this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

(6) Wage rates under this award may be adjusted in accordance with applicable decisions of the Western Australian Industrial Relations Commission.

CHILD CARE (SUBSIDISED CENTRES) AWARD
No. A26 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

Bassendean Town Council and Others.

No. 1633 of 1996.

Child Care (Subsidised Centres) Award

CHIEF COMMISSIONER W.S. COLEMAN.

20 February 1997.

Order.

HAVING heard Ms R. Ho on behalf of the Applicant and Mr P. Robertson 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 Order dated 17 December 1996, be cancelled with effect close of business Tuesday 4 February 1997.
2. THAT the Child Care (Subsidised Centres) 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 4 February 1997.

(Sgd.) W.S. COLEMAN,
[L.S] Chief Commissioner.

Schedule.

1. Clause 2.—Arrangement: After Clause 27.—Classification Definitions and Skill Descriptors insert the following number and name:

2. After Clause 27.—Classification Definitions and Skill Descriptors insert a new clause as follows:

28.—SUPPORTED WAGE SYSTEM

(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

(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their employment.

(c) (i) This clause does not apply to employers in respect of their facility, program, undertaking, service or the like which receive funding under the Disability Services Act 1986 and fulfil the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or eligible for a Disability Support Pension, and such employees.

(ii) Provided that this exclusion shall not prevent Services funded under Section 10 or 12A of the Act referred to in subparagraph (i) hereof, engaging persons who meet the eligibility criteria under the Supported Wages System, on work covered by this Award, where both parties wish to access the System and all other criteria are met.

(3) Supported Wage Rates

(a) 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 (Sub-clause 4)	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(b) Provided that the minimum amount payable shall not be less than $45.00 per week.

(c) 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 party to the award, in consultation with the employee, or;

(b) the employer and an accredited assessor agreed to by the employer and the Union party to the award in consultation with 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 the union which is party to the award is not 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 provision of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award, but be paid at the rate of wage as determined in accordance with this clause.

(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 employees in the area.

(9) Trial Period

(a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional

work adjustment time (not exceeding 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 trailed.

(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 assessment under subclause (4) of this clause.

(10) The conditions of employment, as agreed, to apply during a trial period or in a continuing employment relationship shall be documented, a copy of which shall be provided by the employer to the person employed in accordance with this clause.

ELECTRICAL CONTRACTING INDUSTRY AWARD
No. R 22 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

Electrical Contractors Association of Western Australia Union of Employers and Others.

No. 1420 of 1996.

Electrical Contracting Industry Award, R 22 of 1978.

SENIOR COMMISSIONER FIELDING.

12 February 1997.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Mr D.R. Sproule on behalf of Ralph M. Lee (WA) Pty Ltd, O'Donnell Griffin Pty Ltd, ABB Installation and Service Pty Ltd and Swispec Pty Ltd and the Electrical Contractors Association of Western Australia, Union of Employers and Mr R.S. Raxworthy on behalf of the Federation of Electrical Contractors and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

(1) THAT the Electrical Contacting Industry Award No.22 of 1978 be varied in accordance with the following Schedule with effect from the beginning of the first pay period commencing on or after the date hereof; and

(2) THAT the Application as it relates to other provisions of the Award be and is hereby adjourned sine die.

(Sgd.) G.L. FIELDING,
[L.S] Senior Commissioner.

Schedule

1. Clause 12.-Overtime: In subclause (2)(e)(i) and (2)(e)(iii) of this clause delete the amount "$6.95" and insert in lieu the amount of "$7.10".

2. Clause 30.—SPECIAL PROVISIONS-STATE ENERGY COMMISSION OF WESTERN AUSTRALIA:

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

30.—SPECIAL PROVISIONS—WESTERN POWER CORPORATION

(1) This Clause shall apply to any employee who is engaged on construction work being carried out for the Western Power Corporation at Kwinana or Muja.

B. In subclause (6)(a) of this Clause delete the amount of "$264.40" and insert in lieu thereof the amount "$266.50".

ELECTRICAL, ENGINEERING AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD, 1988
No. A7 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 & Electrical Division, Western Australian Branch

and

West Australian Newspapers & Others.

No. 1504 of 1996.

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988.

COMMISSIONER J.F. GREGOR.

28 February 1997.

Order.

HAVING heard Mr C. Young on behalf of the first named party and Mr R. Joyce and Mr G. Sturman on behalf of the second named parties, 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 1 July 1997.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

Schedule.

1. Clause 2A.—State Wage Principles—June 1991: Delete this clause.

2. Clause 7.—Apprentices: Delete this clause and insert in lieu thereof the following:

7.—APPRENTICES

(1) Apprentices may be taken in the ratio of one apprentice to every two tradespersons or part thereof, and shall not be taken in excess of that ratio unless—

(a) The respective union party to this Award agrees, or

(b) The Commission so determines.

(2) The following applies to adult apprentices—

(a) An adult apprentice means a person of 21 years of age or over at the time of entering into an indenture into one of the trades as mentioned in this Award.

(b) Where a person was employed by the employer immediately prior to becoming an adult apprentice with the employer, such a person shall not suffer a reduction in their actual rate of pay by virtue of becoming indentured.

3. Clause 10.—Overtime: Delete subclause (6) of this clause and insert in lieu thereof the following:

(6) Where an employee is entitled to a meal break pursuant to subclause (13) of this clause; and

(a) The employee has worked two hours or more of overtime immediately before any intermediate or night shift or immediately after a day shift, such employee will receive at least a 30 minute unpaid meal break and be paid meal money of $7.10.

(b) Where an employee works overtime that is continuous with their normal rostered shift and they work two hours or more overtime without a meal break, they will receive a 30 minute meal break which will be paid for at the appropriate overtime rate.

4. Clause 19.—Fares and Travelling: Delete this clause and insert in lieu thereof the following:

Where an employee is required to work away from their shop, the following provisions shall apply:

(1) The employee shall be paid fares of $11.15 per day.

(2) Where the employer requests the employee to use their own vehicle to transfer from one site to another and the employee agrees, an amount of $0.52 per kilometre shall be paid.

5. Clause 20.—Distant Work: Delete subclause (2) of this clause and insert in lieu thereof the following:

(2) Where an employee is required to use their own vehicle for distant work the employer shall insure that employee's vehicle for the duration of the journey and pay the employee $0.58 per kilometre.

6. Clause 21.—Special Rates and Provisions: Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) An employee shall be paid an allowance of $2.90 per shift, or $1.70 per half shift, when engaged on work of an unusually dirty nature where clothes are unduly soiled or damaged by the nature of the work done or when, because of the dimensions of the compartment or space in which he/she is working, he/she is required to work in a stooped or otherwise cramped position, or without proper ventilation.

7. First Schedule—Wages: After subclause (7) insert subclause (8) as follows:

(8) Minimum Wage

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than $332.00 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than $332.00.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering & Electrical Division, Western Australian Branch

and

West Australian Newspapers Limited & Others.

No. 1795 of 1996.

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988.

COMMISSIONER J.F. GREGOR.

28 February 1997.

Order.

HAVING heard Mr C. Young on behalf of the first named party and Mr R. Joyce and Mr G. Sturman on behalf of the second named parties, 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 1 July 1997.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

Schedule.

First Schedule—Wages: Delete subclause (1) and insert in lieu thereof:

(1) (a)	Classification	Base Rate $	Supplementary Payment $	Additional Payment $	1st & 2nd Arbitrated Safety Net Adjustment $	Total Rate $
C6	Industrial Electronic Tradesperson (with 2 or more years experience)	456.50	65.00	48.60	16.00	586.10
C6	Industrial Electronic Tradesperson (with less than 2 years experience)	456.50	65.00	30.30	16.00	567.80
C8	Electrical, Engineering and Building Tradesperson —Carpenter-Tradesperson —Special Class	401.70	57.20	81.60	16.00	556.50
C10	Electrical, Engineering Tradesperson and Building Tradesperson —Multi-skilled Carpenter (more than 2 years experience with the employer)	365.20	52.00	99.10	16.00	532.30
C10	Electrical, Engineering and Building Tradesperson (with less than 2 years continuous experience with the employer)	365.20	52.00	82.60	16.00	515.80

		Base Rate $	Supplementary Payment $	Additional Payment $	1st & 2nd Arbitrated Safety Net Adjustment $	Total Rate $
C12	Tool Storeperson	319.20	45.40	40.30	16.00	420.90
C12/13	Trades Assistant	306.80	42.60	55.50	16.00	420.90

(b) The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

ENGINEERING TRADES (GOVERNMENT) AWARD 1967 AWARD.

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, WA Branch

and

Minister for Works and Services and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. 1578 of 1996.

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

COMMISSIONER P E SCOTT.

5 March 1997.

Order.

HAVING heard Mr D Leeder 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 B Appleby on behalf of the Minister for Works and Services 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, 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 3rd day of February 1997.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1. Clause 14.—Overtime:

A. Delete paragraph (e) of subclause (3) of this clause and insert the following 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 $6.70 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 $4.70 for each meal so required.

B. Delete paragraph (h) of subclause (3) of this clause and insert the following 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 $3.10 for breakfast.

2. Clause 19.—Fares and Travelling Allowances: Delete paragraphs (a), (b) and (c) of subclause (1) of this clause and insert the following in lieu thereof:

(a) On places within a radius of fifty kilometres from the General Post Office, Perth—$12.05 per day.

(b) For each additional kilometre to a radius of sixty kilometres from the General Post Office, Perth—63 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 63 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) of this clause and insert the following in lieu thereof:

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $24.80 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 $10.85 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.

4. First Schedule—Wages: After subclause (13) of this Schedule insert a new subclause (14) as follows:

(14) Minimum Wage:

(a) No employee (including an apprentice), twenty one years of age or over shall be paid less than the minimum weekly rate of pay for employees 21 or more years of age as prescribed by an order made under Section 15 of the Minimum Conditions of Employment Act 1993 as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

(b) Where the minimum rate of pay is applicable that rate shall be payable for public holidays, during annual leave, sick leave, long service leave and any other paid leave prescribed by this award.

(c) Where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed, and not the minimum rate specified in subclause (14)(a).

ENROLLED NURSES AND NURSING ASSISTANTS (GOVERNMENT) AWARD
No. R7 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

Albany Regional Hospital & Others.

No. 1173 of 1996.

COMMISSIONER J. F. GREGOR.

5 March 1997.

Order.

HAVING heard Mr N. Whitehead on behalf of the first named party and Ms A. Riordan 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 Enrolled Nurses and Nursing Assistants (Government) Award (No. R7 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 5 March 1997.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

Schedule.

Clause 19.—Laundry and Uniforms: Delete this clause and insert in lieu thereof the following:

(1) (a) The employer shall provide free of charge the following number and type of uniforms to each employee:

6 dresses, or 6 pairs of trousers/culottes/shorts and 6 short or long sleeved shirts; and

2 jackets or cardigans

(b) The employee shall choose which combination of the above best suits their needs.

(c) Uniforms shall be replaced as and when necessary on a fair wear and tear basis.

(2) The employer shall determine the material, colour, pattern and conditions of the uniforms issued.

(3) At all times the uniform issued to the employee shall remain the property of the employer.

(4) No staff member will be required to wear stockings.

(5) All staff must wear a suitably enclosed shoe, however the employer may not specify colour or brand.

(6) The standard uniform issue may be varied by agreement between the employer and the Union where a hospital has the need for particular items of clothing to be worn. Each employee shall have a sufficient number of uniforms to ensure a clean uniform daily.

(7) All washable clothing forming part of the uniform supplied by the employer shall be laundered free of cost to the workers. Provided that in lieu of such free laundering the employer may pay the employee $1.05 per week.

(8) Laundering of jackets and cardigans issued as part of the uniform shall be the responsibility of the employee. No laundry allowance will be paid for this work.

(9) By agreement between an employer and an employee and where a hospital is situated north of 26º south latitude, jackets and cardigans need not be supplied.

(10) (a) The provisions of this subclause shall only apply to enrolled community nurses and enrolled community school nurses only.

(b) The employer shall provide nurses with all uniforms that shall at all times remain the property of the employer.

(c) Provided further that in lieu of providing uniforms the employer may pay an allowance of $4.70 per week, and the nurse shall wear uniforms which conform to the uniform stipulated by the employer with respect to material, colour, pattern and conditions.

(d) Where the employer does not require the nurse to wear a uniform no allowance shall be paid.

(e) Each nurse 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 nurse shall be paid an allowance of $1.50 per week.

ENROLLED NURSES AND NURSING ASSISTANTS (PRIVATE) AWARD.
No. 8 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

St John of God Hospital and Others.

No. 1332(A) of 1996.

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

No. 8 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

20 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT this application be split into Parts (A) and (B). Further, that the provisions for Fares and Motor Vehicle Allowances will be dealt with under part (B) at a later stage following further discussions between the parties.

(2) THAT the Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978 be varied in accordance with the following Schedule and that such variation being made in relation to:

(a) paragraph (1) of the Schedule in accordance with Consumer Price Index adjustments, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 7, subgroup "Meals Out & Takeaway Foods" for September 1991 and September 1996 inclusive;

(b) paragraph (2)(a) of the Schedule in accordance with a 1.1% increase in the Consumer Price Index adjustment for the quarters September 1991 to September 1996 inclusive, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 6, subgroup "Clothing";

(a) paragraph (2)(b) of the Schedule in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case (print M9765), based on the key classification of Enrolled Nurse Level 1;

and these variations shall have effect from the first pay period commencing on or after the 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8.—Overtime: Delete the amount of $5.40 in subclause (5) and insert in lieu thereof the amount of $6.60.

2. Clause 17.—Laundry and Uniforms:

A. Delete the amount of $3.95 in subclause (2) and insert in lieu thereof the amount of $4.00.

B. Delete the amount of $1.00 in subclause (4) and insert in lieu thereof the amount of $1.05.

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 John of God Hospital and Others.

No. 1332(A) of 1996.

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

No. 8 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

5 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 20 February 1997, the following correction is made—

1. Delete instruction (1) of the Order and replace with the following:

1. Clause 8.—Overtime: Delete the amount of $5.40 in subclause (5) and insert in lieu thereof the amount of $5.80.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

FIRE BRIGADE EMPLOYEES (WORKSHOPS) AWARD 1983.

No. 6 of 1981.

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

Western Australian Fire Brigades Board and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. 1581 of 1996.

Fire Brigade Employees (Workshops) Award 1983.

No. 6 of 1981.

COMMISSIONER P E SCOTT.

5 March 1997.

Order.

HAVING heard Mr D Leeder on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch and Mrs N Embleton on behalf of the Western Australian Fire Brigades Board and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Fire Brigade Employees (Workshops) Award 1983 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 3rd day of February 1997.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1. Clause 9.—Overtime: Delete subclause (3) of this clause and insert the following in lieu thereof:

(3) An employee required to work continuous overtime for more than one hour shall be supplied with a meal by the employer or be paid $5.47 for a meal.

2. Clause 19.—Wages:

A. In paragraph (a) of subclause (2) replace the word "Tradesperson" with the words "Engineering Tradesperson".

B. Delete subparagraph (i) of paragraph (b) subclause (2) of this clause and renumber (2)(b)(ii) to (2)(b)(i).

C. After subclause (7) of this clause insert new subclause (8) as follows:

(8) Minimum Wage:

(a) No employee (including an apprentice), twenty one years of age or over shall be paid less than the minimum weekly rate of pay for employees 21 or more years of age as prescribed by an order made under Section 15 of the Minimum Conditions of Employment Act 1993 as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

(b) Where the minimum rate of pay is applicable that rate shall be payable for public holidays, during annual leave, sick leave, long service leave and any other paid leave prescribed by this award.

(c) Where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed, and not the minimum rate specified in subclause(8)(a).

GOLF LINK AND BOWLING GREEN EMPLOYEES' AWARD, 1993.
No. 16 of 1967.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Albany Bowling Club & Others.

No. 1117 of 1996.

Golf Link and Bowling Green Employees' Award, 1993.

COMMISSIONER J.F. GREGOR.

21 February 1997.

Order.

HAVING heard Mr M Lourey on behalf of the first named party and Mr C Keys, Mr T Crossley and Mr K Graham on behalf of the second named parties, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Golf Link and Bowling Green Employees' Award, 1993, be varied in accordance with the following

Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 21 February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

———

Schedule.

1. Clause 2—Arrangement. Immediately following number and Title 34.—Award Modernisation/Enterprise Agreements, insert the following:

Schedule A—Respondents

Schedule B—Parties to the Award

2. Clause 27.—Wages.

A. Delete preamble and subclause (1) of this clause and insert in lieu thereof the following new preamble and subclause:

The following shall be the minimum rates of wages payable to employees covered by this award.

	Base Rate per fortnight $	Arbitrated Safety Net Adjustment $	Total Rate per fortnight $
CLASSIFICATIONS			
(1) Adult Employees			
Trainee (90% of Groundsperson Grade 1 rate)	561.40	16.00	577.40
Groundsperson Grade 1	623.80	16.00	639.80
Groundsperson Grade 2	630.80	16.00	646.80
Assistant Greenkeeper	675.40	16.00	691.40
Greenkeeper Tradesperson Grade 1	795.40	16.00	811.40
Greenkeeper Tradesperson Grade 2	814.00	16.00	830.00

The rates of pay in this award include the first $16.00 per fortnight arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $16.00 per fortnight arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

B. Immediately following subclause (3) of this clause, insert new subclause (4) entitled Minimum Wage Rates:

(4) Minimum Wage Rates

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty one years of age or over, shall be paid less than $664.00 per fortnight at his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than $664.00.

Provided that, no employee aged twenty-one years or more, who is an apprentice, shall be paid less than $551.00 per fortnight in respect of the ordinary hours of work prescribed by this award.

3. Clause 34.—Award Modernisation/Enterprise Agreements: Immediately following this clause, insert new Schedule "A"—Respondents and new Schedule "B"—Parties to the Award, as follows:

SCHEDULE "A"—RESPONDENTS

Air Force Association Bowling Club
Albany Bowling Club (Inc.)
Armadale District Bowling Club (Inc.)
L. N. Ball
Bayswater Bowling & Recreation Club (Inc)
Bedford Bowling Club (Inc)
Carnarvon Bowling Club (Inc)
City Beach Bowling Club (Inc)
Collie Bowling Club (Inc)
Cottesloe Golf Club (Inc)
Dalkeith-Nedlands Bowling Club (Inc)
Donnybrook Golf Club (Inc)
East Fremantle Bowling Club (Inc.)
Floreat Park Bowling Club (Inc.)
Geraldton Bowling Club (Inc)
Harvey Golf Club (Inc)
Hollywood/Subiaco Bowling Club (Inc.)
Kalgoorlie Bowling Club (Inc.)
Kwinana Bowling Club (Inc)
Kwinana Golf Club (Inc.)
Leederville Bowling and Sporting Club (Inc.)
Manning Memorial Bowling Club (Inc.)
Mt Barker Golf Club (Inc)
Mt Lawley Bowling Club (Inc.)
Mt Lawley Golf Club (Inc)
Nedlands Golf Club (Inc)
Nollamara Lawn Bowling and Recreation Club (Inc)
Northam Bowling Club (Inc)
Osborne Park Bowling Club (Inc)
Pinjarra Golf Club (Inc)
Riverton Rossmoyne Bowling Club (Inc)
Rockingham Golf Club (Inc)
Royal Perth Golf Club (Inc)
Royal Fremantle Golf Club (Inc.)
Safety Bay Bowling Club (Inc.)
Sea View Golf Club (Inc)
South Perth Bowling Club (Inc.)
Victoria Park Bowling Club (Inc.)
Wembley Bowling Club (Inc)
Yokine Bowling Club (Inc.)
York Golf Club (Inc)

SCHEDULE "B"—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

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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 WA and Others.

No. 1577 of 1996.

Government Water Supply, Sewerage and Drainage Employees Award 1981.

No. 2 of 1980.

COMMISSIONER P E SCOTT.

5 March 1997.

Order.

HAVING heard Mr D Leeder 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 W Lyon on behalf of the Water Authority of WA, and Mr C Young 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 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 the 3rd day of February 1997.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

1. Clause 14.—Travelling Time and Allowances: Delete paragraph (a) of subclause (3) of this clause and insert the following 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 $11.95 per day.

2. Clause 17.—Tea Breaks, Meal Hours and Refreshments: Delete paragraph (a) of subclause (6) of this clause and insert the following in lieu thereof:

(6) (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 $7.36 but payment need not be made to employees residing in the locality of the work who can reasonably return home for meals.

3. Clause 26.—Distant Work—Construction: Delete subclauses (6) and (7) of this clause and insert the following in lieu thereof:

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $25.00 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 $10.90 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.

4. Clause 38.—Wages: After subclause (8) of this clause insert a new subclause (9) as follows:

(9) Minimum Wage:

(a) No employee (including an apprentice), twenty one years of age or over shall be paid less than the minimum weekly rate of pay for employees 21 or more years of age as prescribed by an order made under Section 15 of the Minimum Conditions of Employment Act 1993 as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

(b) Where the minimum rate of pay is applicable that rate shall be payable for public holidays, during annual leave, sick leave, long service leave and any other paid leave prescribed by this award.

(c) Where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed, and not the minimum rate specified in subclause (9)(a).

HOSPITAL EMPLOYEES' (HOME OF PEACE) CONSOLIDATED AWARD 1981.

No. 26 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

Homes of Peace (Inc).

No. 1335(A) of 1996.

Hospital Employees' (Home of Peace) Consolidated Award 1981.

No. 26 of 1960.

CHIEF COMMISSIONER W.S. COLEMAN.

20 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT this application be split into Parts (A) and (B). Further, that the provisions for Fares and Motor Vehicle Allowances will be dealt with under part (B) at a later stage following further discussions between the parties.

(2) THAT the Hospital Employees' (Home of Peace) Consolidated Award 1981 be varied in accordance with the following Schedule and that such variation being made in relation to:

(a) paragraph (1) of the Schedule in accordance with Consumer Price Index adjustments, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 7, subgroup "Meals Out & Takeaway Foods" for September 1991 and September 1996 inclusive;

(b) paragraph (2) of the Schedule in accordance with a 1.1% increase in the Consumer Price Index adjustment for the quarters September 1991 to September 1996 inclusive, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 6, subgroup "Clothing";

(a) paragraph (3) of the Schedule in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case (print M9765), based on the key classification of Tradesperson Cook;

and these variations shall have effect from the first pay period commencing on or after the 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 9.—Overtime: Delete the amount of $5.40 in subclause (5) and insert in lieu thereof the amount of $6.60.

2. Clause 15.—Uniforms: Delete the amount of $3.95 in subclause (2) and insert in lieu thereof the amount of $4.00.

3. Clause 28.—Wages: Delete the amount of $14.20 in subclause (2)(a) and insert in lieu thereof the amount of $14.90.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Homes of Peace (Inc).

No. 1335(A) of 1996.

Hospital Employees' (Home of Peace) Consolidated Award 1981.

No. 26 of 1960.

CHIEF COMMISSIONER W.S. COLEMAN.

5 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 20 February 1997, the following correction is made—

1. Delete instruction (1) of the Order and replace with the following:
   1. Clause 9.—Overtime: Delete the amount of $5.40 in subclause (5) and insert in lieu thereof the amount of $5.80.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

HOSPITAL WORKERS (N'GALA) AWARD
No. 6A of 1958.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ngala Family Resource Centre.

No. 1339(A) of 1996.

Hospital Workers (N'Gala) Award No. 6A of 1958.

No. 6A of 1958.

CHIEF COMMISSIONER W.S. COLEMAN.

19 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT this application be split into Parts (A) and (B). Further, that the provisions for Fares and Motor Vehicle Allowances will be dealt with under Part (B) at a later stage following further discussions between the parties.

(2) THAT the Hospital Workers (N'Gala) Award No. 6A of 1958, be varied in accordance with the following Schedule and that such variation being made in relation to:

(a) paragraph (1) of the Schedule in accordance with Consumer Price Index adjustments based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 7, subgroup "Meals Out & Takeaway Foods" for September 1991 and September 1996 inclusive;

(b) paragraph (2) of the Schedule in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case (print M9765), based on the key classification of Hospital Worker Level 4; and

(c) paragraph (3) of the Schedule in accordance with a 1.1% increase in the Consumer Price Index adjustment for the quarters September 1991 to September 1996 inclusive, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 6, subgroup "Clothing"

and these variations shall have effect from the first pay period commencing on or after the 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 14.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $6.60.

2. Clause 17.—Allowances and Special Provisions: Delete the amount of $1.35 in subclause (1) and insert in lieu thereof the amount of $1.40.

3. Clause 23.—Uniforms: Delete the amount of $3.85 in subclause (2) and insert in lieu thereof the amount of $3.90.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ngala Family Resource Centre.

No. 1339(A) of 1996.

Hospital Workers (N'Gala) Award No. 6A of 1958.

No. 6A of 1958.

CHIEF COMMISSIONER W.S. COLEMAN.

5 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 19 February 1997, the following correction is made—

1. Delete instruction (1) of the Order and replace with the following:
   1. Clause 14.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $5.80.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

LICENSED ESTABLISHMENTS (RETAIL AND WHOLESALE) AWARD 1979.

No. R23 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Burns Philp and Co Ltd & Others.

No. 1799 of 1996.

Licensed Establishments (Retail and Wholesale) Award 1979.

COMMISSIONER J.F. GREGOR.

4 March 1997.

Order.

HAVING heard Ms K. Cameron on behalf of the first named party and Ms C. Brown on behalf of the parties granted intervention in proceedings on 27 February 1997, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Licensed Establishments (Retail and Wholesale) Award 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 27 February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

———

Schedule.

1. Clause 2.—Arrangement:
   - A. Delete the number and title "29. Compassionate Leave" and insert in lieu thereof the following:
     29. Bereavement Leave
   - B. Delete the number and title "30. Engagement" and insert in lieu thereof the following:
     30. Contract of Employment and Termination
   - C. Delete the number and title "35. Maternity Leave" and insert in lieu thereof the following:
     35. Parental Leave
   - D. Immediately following the number and title "41. Supported Wages Employees" insert the following new number and title:
     42. Redundancy
   - E. Immediately following the number and title "42.—Redundancy" insert the following:
     Appendix 1- Parental Leave Entitlements
2. Clause 6.—Definitions. Delete subclause (9) of this clause.
3. Clause 12.—Annual Leave:
   - A. Delete subclause (1) of this clause and insert in lieu thereof the following:
     (1) Except as otherwise provided by this clause, a period of four consecutive weeks leave with payment of ordinary wages as prescribed shall be allowed annually by the employer to an employee who has completed twelve months' continuous employment with that employer.
   - B. Delete subclause (2) of this clause and insert in lieu thereof the following:
     (2) (a) During a period of annual leave an employee shall be paid a loading of 17.5% calculated on his or her ordinary wages as prescribed by this award.
     (b) The loading prescribed by paragraph (a) above shall not apply to proportionate leave paid out on termination.
   - C. Delete subclause (3) of this clause and insert in lieu thereof the following:
     (3) If any holiday as prescribed by Clause 11.—Holidays of this Award falls within a employee's period of annual leave and is observed on a day which would otherwise have been an ordinary working day for that employee, one day shall be added to the employee's period of annual leave for each such holiday.
   - D. Delete subclause (4) of this clause and insert in lieu thereof the following:
     (4) (a) Entitlement to annual leave shall accrue weekly at the rate of 2.923 hours per week.
     (b) If after one week's continuous service in any qualifying 12 month period an employee leaves his or her employment or his or her employment is terminated by the employer, then the employee shall be paid 2.923 hours pay at his or her ordinary rate of pay for each completed week of service.
     (c) In addition to the payment to which an employee may be entitled under paragraph (a) of this subclause, an employee whose employment terminates after the completion of a twelve month qualifying period and who has not been allowed the leave or a portion of the leave prescribed under this award shall be given payment as prescribed by subclause (1) and (2)(a) of this clause in lieu of that leave or portion of leave, unless:
     (i) the employee has justifiably been dismissed for misconduct; and
     (ii) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.
4. Clause 13.—Sick leave:
   - A. Delete subclause (1) of this clause and insert in lieu thereof the following:
     (1) (a) An employee who is unable to attend or remain at his or her place of employment during ordinary hours of work by reason of personal ill health or injury shall be entitled to payment for such absence in accordance with the following provisions.
     (b) Entitlement to payment for a full time employee shall accrue weekly at the rate of 1.461 hours per week, such that an employee's maximum annual sick leave entitlement shall be 76 hours. For part time employees the entitlement in hours to sick leave shall accrue at a rate per week calculated in the following manner:

     $$\frac{\text{Hours per week}}{38} \times 1.461$$

     (c) The rate of pay for an absence in accordance with this clause shall be the employee's ordinary wage that he/she would have received had he/she not been on leave. For part time employees, payment shall only be made for rostered ordinary hours he/she would have worked had he/she not been on leave in accordance with this clause.
     (d) If, in the first or successive years of service with the employer, an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave,

payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

B. Delete subclauses (3) and (4) of this clause and insert in lieu thereof the following:

(3) Employers and employees may enter into agreements with respect to notification to the employer, within a specified period, of an employee's inability to attend work due to illness or injury. In all cases an employee shall notify the employer as soon as reasonably practicable of the absence, provided that:

(a) the agreement is between the employer and the majority of employees covered by this award who are affected by the notification requirements;

(b) the agreement is available for inspection in the same manner as prescribed in Clause 20.—Time and Wages Record and Roster; and

(c) an entitlement to payment under this clause shall not be withheld if;

(i) the employee has given notice within 24 hours of the commencement of the absence; or

(ii) the employee demonstrates extraordinary circumstances existed which prevented notice being given.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury that would satisfy a reasonable person. Provided that an employee shall not be required to produce a medical certificate or such other proof with respect to absences of two days or less unless after two such absences in any year of service the employer requests that the next and subsequent absences, if any, shall be accompanied by such certificate.

5. Clause 20.—Time and Wages Record and Roster. Insert a new paragraph (g) in subclause (1) as follows:

(g) the amount of superannuation contributions made to the superannuation fund in accordance with Clause 38.—Superannuation of this Award by the employer.

6. Clause 24.—Other Provisions. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) Employees called upon to carry or lift shall do so in accordance with the Manual Handling Code of Practice issued by the WorkSafe Western Australia Commission.

7. Clause 29.—Compassionate Leave:

A. Delete the number and title of this clause and insert in lieu thereof the following:

29.—BEREAVEMENT LEAVE

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

(1) An employee shall, on the death of the spouse, de facto spouse, parent, step-parent, child or step-child of the employee or any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave for ordinary hours of up to two days.

(2) The right to such leave shall be dependent on compliance with the following conditions:

(a) The employee shall furnish proof such as would satisfy a reasonable person as to the death that is the subject of the leave and/or the relationship of the employee to the deceased person should the employer so request.

(b) The employee shall not be entitled to leave under this clause during a period of any other kind of leave.

C. Delete subclause (3) of this clause.

8. Clause 30.—Engagement: Delete this clause and insert in lieu the following:

30.—CONTRACT OF EMPLOYMENT AND TERMINATION

(1) (a) An employee will be engaged as a full time, part time or casual employee.

(b) A full time or part time employee engaged for a period of four consecutive weeks or less shall be deemed a casual employee and be paid not less than the minimum rates of wages contained in subclause (6) of Clause 6—Definitions of this Award.

This paragraph shall not apply to an employee engaged as a full time or part time employee who is justifiably dismissed or who severs his or her contract of service.

(2) In addition to the provisions contained in subclause (2) of Clause 24—Other Provisions of this Award, an employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and to use such equipment as may be required, provided that the employee has been properly trained in the use of such equipment.

(3) Termination of Employment

(a) Full time and Part time employees

(i) Should an employer wish to terminate a permanent employee, the following period of notice shall be provided—

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(ii) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.

(iii) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(iv) Payment in lieu of notice shall be calculated using the employee's weekly ordinary time earnings.

(v) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

(vi) Notice of termination by employee

Except in the first 2 month's of service, 1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture or payment of 1 week's pay by the employee to the employer in lieu of notice.

In the first month of service, an employee may give a moment's notice to terminate his or her employment.

In the second month's service, an employee may give 1 day's notice to terminate his or her employment, or the forfeiture or payment of 1 day's pay by the employee to the employer in lieu of notice.

(vii) Termination by employer prior to public holiday.

An employee whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays.

Provided that in the event of Christmas Eve falling on a Saturday or a Sunday any employee whose employment is terminated by the employer on the preceding Friday otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

(viii) Probation

An employee engaged under the terms of this Award may be engaged under probation for an agreed period not exceeding two months.

Notwithstanding placitum (i) above, should an employer wish to terminate an employee still on probation, the following notice shall be provided:

First month of probationary employment	A moment
Second month of probationary employment	1 day

Provided that where the relevant notice period is not provided, the employee shall be entitled to payment in lieu.

(b) Casual Employees

The employment of a casual employee may be terminated by the giving or receiving of 1 hour's notice.

9. Clause 35.—Maternity Leave. Delete this clause and insert in lieu thereof the following:

35.—PARENTAL LEAVE

(1) Subject to the terms of this clause employees are entitled to unpaid maternity, paternity and adoption leave and to work part time with the approval of the employer in connection with the birth or adoption of a child in accordance with the provisions of Appendix 1 to this Award.

(2) Definitions

For the purposes of Appendix 1, the following definitions shall apply:

(a) "Employee" includes a part time employee but does not include an employee engaged upon casual or seasonal work.

(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.

10. Clause 38.—Superannuation:

A. Insert new preamble to this clause as follows:

The provisions of this clause shall be read in conjunction with and shall complement the provisions of the Superannuation Guarantee (Administration) Act 1992.

B. Delete subclause (2) and insert in lieu the following:

(2) Quantum

(a) Employers bound by this Award shall make application to participate in the Fund either formally or informally and shall contribute to the Fund in respect of all eligible employees an amount equal to the percentage as set out in paragraph (b) of this subclause of each employee's weekly ordinary time earnings.

(b) The percentage applicable to an employer for the purposes of paragraph (a) of this subclause shall be:

YEAR	Percentage Amount
1996—1997	6%
1997—1998	6%
1998—1999	7%
1999—2000	7%
2000—2001	8%
2001—2002	8%
2002—2003	9%
Subsequent Years	9%

C. Delete subclause (4), (5), (6) and (7) of this clause and insert in lieu the following:

(4) Eligibility

(a) The employer shall be required to make contributions in accordance with this clause in respect of each employee except where:

(i) an employee earns less than $450.00 in any calender month; or

(ii) an employee who is aged under 18 years of age and who works 30 hours or less per week.

(b) Employees with existing superannuation entitlements:

Notwithstanding any other provision of this clause, a part time or casual employee who was entitled to superannuation payments made by the employer in accordance with this award as at 26 February 1997, shall continue to be eligible to receive superannuation payments in accordance with this clause at the rate of 3%.

(5) Employee contributions

Employees who may wish to make contributions to the Fund additional to those being made by the employer pursuant to subclause (2) shall be entitled to authorise the employer to pay into the Fund from the employee's wages amounts specified by the employee.

Employees contributions to the Fund requested under this subclause shall be made in accordance with the rules of the Fund.

D. Renumber existing subclauses (8) and (9) as subclauses (6) and (7).

E. Delete subclauses (10) and (11) of this clause.

11. Clause 41.-Supported Wages Employees: Following this clause, insert a new clause as follows:

42.—REDUNDANCY

(1) This clause applies to employers who engage 15 or more employees at the time of any redundancies.

(2) Discussions Before Terminations

(a) Where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment,

the employer shall hold discussions with the employees directly affected and with the union.

(b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

(c) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out.

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

(3) Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (2) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(4) Severance Pay

In addition to the period of notice provided in Clause 30.—Contract of Employment and Termination, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance pay
less than 1 year	nil
1 year but less than 2 years	2 weeks' pay
2 years but less than 3 years	4 weeks' pay
3 years but less than 4 years	6 weeks' pay
4 years but less than 5 years	8 weeks' pay
5 years and over	10 weeks' pay

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

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

(5) Superannuation Benefits

(a) Subject to further order of the Commission, where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (4) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

(b) If the superannuation benefit is greater than the amount due under subclause (4) of this clause then the employee shall receive no payment under that paragraph.

(c) Provided that benefits arising directly or indirectly from contributions made by an employer in accordance with an award, agreement or order made or registered under the Industrial Relations Act 1979 or the Industrial Relations Act 1988, or in accordance with the Superannuation Guarantee (Administration) Act 1992, shall not be taken into account unless the Commission so orders in a particular case.

(6) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (2) above may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice in accordance with Clause 30.—Contract of Employment and Termination.

(7) Alternative Employment

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

(b) Where the employer in a particular redundancy case obtains employment for an employee, which is:

(i) equivalent in status and salary or wages to the former position; and

(ii) does not require the employee to travel any further to his or her new employment than the employee was travelling to his or her former employment,

the employer is not required to make payments in accordance with subclause (4) above. Provided that the union may refer such matter to the Commission for determination.

(8) Time Off During Notice Period

(a) During the period of notice of termination given by the employer and employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent.

For the purpose a statutory declaration will be sufficient.

(9) Notice to Commonwealth Employment Service

Where a decision has been made to terminate the services of 15 or more employees in the circumstances outlined in subclause (2) above, the Employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(10) Transmission of Business

(a) Where a business is before or after the date of this award, transmitted from one employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:

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

and

(ii) The period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(b) In this subclause "business" and "transmission" has the same meaning and effect as in

the Long Service Leave General Order at Volume 59 of the Western Australian Industrial Gazette, at pages 1 to 6.

(11) Employees with Less Than One Year's Service

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

(12) Employees Exempted

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

(13) Incapacity to pay

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

12. Clause 42.- Redundancy: Following this clause, insert the following:

APPENDIX 1.-PARENTAL LEAVE ENTITLEMENTS

(1) Maternity Leave

(a) Nature of Leave

Maternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause:

(i) "Paternity leave" means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.

(ii) "Child" means a child of the employee under the age of one year.

(c) Eligibility for Maternity Leave

An employee who becomes pregnant, upon production to the employer of the certificate required by paragraph (d) hereof, shall 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, specified in the relevant statutory declaration.

Subject to paragraphs (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement include a period of six weeks compulsory leave. Notwithstanding the requirement to take compulsory leave, an employee may request to return to work at any time, subject to the agreement of the employer.

The employee must have had at least 12 months continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the employer;

(i) A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(ii) 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 engaged in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

(i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to the employer the certificate referred to in subparagraph placitum (i) of paragraph (d) above.

(ii) An employee shall give not less than four weeks notice in writing to the 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 the employer the statutory declaration referred to in placitum (ii) of paragraph (d) above.

(iii) 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 the presumed date of confinement.

(iv) An employee shall not be in breach of this Clause as a consequence of failure to give the specified period of notice in accordance with placitum (ii) hereof if such failure is occasioned by:

(aa) the confinement occurring earlier than the presumed date, or

(bb) compelling circumstances, it was not reasonably practicable for the employee to comply; or

(cc) by the employee submitting the application as soon as reasonably practicable before, on or after the first day of the leave.

(f) 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 employer may, or the employer may require the worker 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 paragraphs (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

(i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof,

(aa) 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;

(bb) The period may be further lengthened by agreement between the employee and the employer.

(ii) 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.

(h) Cancellation of Maternity Leave

(i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a employee terminates other than by the birth of a living child.

(ii) Where the pregnancy of a 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.

(i) Special Maternity Leave and Sick Leave

(i) 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—

(aa) 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

(bb) 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 registered medical practitioner certifies as necessary before her return to work.

(ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 paragraph (c) hereof

(iii) For the purposes of paragraph (j), (k) and (1) hereof, maternity leave shall include special maternity leave.

(iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph 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 paragraph (f), hereof to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified 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.

(j) Maternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, 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.

(ii) 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.

(k) Effect of Maternity Leave on Employment

Subject to this subclause, irrespective of 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.

(l) Termination of Employment

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(ii) The 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 the employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

(i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(ii) An employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f) hereof, 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.

(n) Replacement Workers

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(ii) Before the 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.

(iii) Before the employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, 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.

(iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(2) Paternity Leave

(a) Nature of Leave

Paternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause

(i) "Maternity leave" means leave of the type provided for in subclause (1) of this clause and includes special maternity leave whether prescribed in an award or otherwise.

(ii) "Child" means a child of the employee or the employee's spouse under the age of one year.

(iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility for Paternity Leave

A male employee upon production to the employer of the certification required by paragraph (f) hereof, 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 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 employees spouse in relation to the same child and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the employer;

(i) 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;

(ii) in relation to any period to be taken under placitum (ii) of paragraph (c) hereof, a statutory declaration stating:

(aa) He will take that period of paternity leave to become the primary care-giver of a child;

(bb) particulars of any period of maternity leave sought or taken by his spouse; and

(cc) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

(i) 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 paragraph (d) hereof

The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to:

(aa) The birth occurring earlier than the expected date; or

(bb) the death of the mother of the child; or

(cc) other compelling circumstances.

(iii) The employee shall immediately notify the employer of any change in the information provided pursuant to paragraph (d) hereof.

(f) Variation of Period of Paternity Leave

(i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof

(aa) The period of paternity leave provided by placitum (ii) of paragraph (c) 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;

(bb) The period may be her lengthened by agreement between the employer and the employee.

(ii) The period of paternity leave taken under placitum (ii) of paragraph (c) hereof 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.

(g) Cancellation of Paternity Leave

(i) Paternity leave, applied for under placitum (ii) of paragraph (c) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

Paternity leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, 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.

(ii) 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.

(i) 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.

(j) Termination of Employment

(i) 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.

(ii) The 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.

(k) Return to Work After Paternity Leave

(i) 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 placitum (ii) of paragraph (c) hereof

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by placitum (i) above, 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 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 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.

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(ii) Before the 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.

(iii) Before the employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this subclause, 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.

(iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(3) Adoption Leave

(a) Nature of Leave

Adoption leave is unpaid leave

(b) Definitions

For the purposes of this subclause

(i) "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.

(ii) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).

(iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility

An employee, upon production to the employer of the certification required by paragraph (d) hereof, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) An unbroken period of up to three weeks at the time of placement of the child;

(ii) An unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of a 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:

(aa) Any period of leave taken pursuant to placitum (i) above; and

(bb) the aggregate of any periods of adoption leave taken or to be taken by the employees spouse;

The employee must have had at least 12 months continuous service with the employer immediately preceding the date upon which he or she proceeds on such leave in either case.

(iii) The entitlement to adoption leave must not overlap with any periods of adoption leave taken by the employees spouse, except an unbroken period of up to three weeks at the time of placement of the child.

(d) Certification

Before taking adoption leave the employee must produce to the employer;

(i) (aa) 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

(bb) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(ii) in relation to any period to be taken under placitum (ii) of paragraph (3) hereof, a statutory declaration stating:

(aa) The employee is seeking adoption leave to become the primary care-giver of the child

(bb) particulars of any period of adoption leave sought or taken by the employees spouse; and

(cc) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

(i) 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.

(ii) An employee who commences employment with the 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 the employer immediately preceding the date upon which he or she proceeds upon such leave.

(iii) 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 placitum (i) of paragraph (c) hereof

(iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under placitum (ii) of paragraph (c) hereof, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(v) 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 placitum (iii) and (iv) hereof 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.

(f) Variation of Period of Adoption Leave

(i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (c) hereof

(aa) The period of leave taken under placitum (ii) of paragraph (c) hereof 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;

(bb) The period may be further lengthened by agreement between the employer and the employee.

(ii) The period of adoption leave taken under placitum (ii) of paragraph (c) hereof 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.

(g) Cancellation of Adoption Leave

(i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

(ii) 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.

(iii) Adoption leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.

(h) 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.

(i) Adoption Leave and Other Entitlements

(i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof 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.

(ii) 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.

(j) Effect of Adoption Leave on Employment

Subject to this subclause, irrespective of 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.

(k) Termination of Employment

(i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

(ii) The 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.

(l) Return to Work After Adoption Leave

(i) 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 placitum (ii) of paragraph (c) hereof.

(ii) 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 clause 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 employees former position.

(m) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(ii) Before the 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.

(iii) Before the employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, 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.

(iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(4) Part Time Work

(a) Definitions

For the purpose of this subclause:

(i) "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.

(ii) "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.

(iii) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part time employment under this subclause whichever first occurs or, if such 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.

(b) Entitlement

With the agreement of the employer:

(i) 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.

(ii) 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.

(iii) A female employee may work part time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

(iv) 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.

(c) Return to Former Position

(i) An employee who has had at least 12 months continuous service with the 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.

(ii) Nothing in placitum (i) hereof 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.

(d) Effect of Part time Employment on Continuous Service

Commencement on part time work under this clause, and return from part time work to full time work under this clause, shall not break continuity of service or employment.

(e) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (f) hereof, part time employment shall be in accordance with the provisions of this award which shall apply pro-rata.

(f) Part time Work Agreement

(i) Before commencing a period of part time employment under this subclause the employee and the employer shall agree:

(aa) That the employee may work part time; upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(bb) Upon the classification applying to the work to be performed; and

(cc) Upon the period of part time employment.

(ii) The terms of this agreement may be varied by consent.

(iii) 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.

(iv) The terms of this agreement shall apply to the part time employment.

(g) Termination of Employment

(i) The employment of a part time employee under this clause, 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 clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

(ii) Any termination entitlements payable to an employee whose employment is terminated while working part time under this clause, or while working full time after transferring from part time work under this clause, shall be calculated by reference to the full time rate of pay at the time of termination and by regarding all service as a full time employment and all service as a part time employee on a pro-rata basis.

(h) Extension of Hours of Work

The employer may request, but not require, an employee working part time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (f).

(i) Nature of Part Time Work

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.

(j) Inconsistent Award Provisions

An employee may work part time under this clause irrespective of any other provision 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 prescribing a minimum or maximum number of hours a part time employee may work.

(k) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee working part time under this subclause.

(ii) A replacement employee may be employed part time. Subject to this paragraph, paragraphs (e), (f), (g) and (j) of this subclause apply to the part time employment of a replacement employee.

(iii) 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.

(iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of placitum (v) of paragraph (a) hereof

(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION) INDUSTRY AWARD
No. 29 of 1980
No. A 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

Allpike's Honda and Peugeot and Others.

No. 1764 of 1996.

COMMISSIONER C.B. PARKS.

12 February 1997.

Order.

HAVING heard Mr M. Lourey on behalf of the Applicant and Ms J. Moss on behalf of a Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 4 February 1997.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

1. Clause 8A.—Additional Rates for Ordinary Hours: Delete this clause and insert in lieu thereof—

8A.—ADDITIONAL RATES FOR ORDINARY HOURS

A full time, part time or casual employee shall be paid the following additional loadings calculated as a proportion of the appropriate Total Rate per Week prescribed in Clause 21.—Wages hereof for a full time employee, divided by 38, for each hour's work performed in ordinary time as prescribed hereunder:

	% From 7.00AM to 6.00PM	% Between 6.00PM and 7.00AM
(a) Monday to Friday	0	15
(b) On Saturday	25	40
(c) On Sunday	75	90
(d) On Public Holidays	100	115

2. Clause 21.—Wages: Delete the preamble, and subclause (1), of this clause and insert in lieu thereof—

The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 4 February 1997.

(1) Adult Employees:

		Base Rate Per Week	Supplementary Payment	1st & 2nd Arbitrated Safety Net Adjustments	Total Rate Per Week
		$	$	$	$
Service Station Attendant Grade 1 reclassified to Levels					
	I.	298.90	8.10	16.00	323.00
	II.	298.90	15.10	16.00	330.00
Service Station Attendant Grade 2 reclassified to Levels					
	II.	321.30	5.30	16.00	342.60
	III.	321.30	14.90	16.00	352.20
	IV.	321.30	23.80	16.00	361.10
Service Station Attendant Grade 3 reclassified to Levels					
	III.	337.70	7.80	16.00	361.50
	IV.	337.70	16.60	16.00	370.30

Provided that any increase in rates of pay flowing from the implementation of the Minimum Rates Adjustment principle, may be absorbed into any existing overaward payment, insofar as that overaward payment is not being used for the purposes of absorption of Arbitrated Safety Net Adjustments.

PRIVATE HOSPITAL EMPLOYEES' AWARD 1972
No. 27 of 1971.

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 John of God Hospital and Others.

No. 1343(A) of 1996.

Private Hospital Employees' Award, 1972

No. 27 of 1971.

CHIEF COMMISSIONER W.S. COLEMAN.

19 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT this application be split into Parts (A) and (B). Further, that the provisions for Fares and Motor Vehicle Allowances will be dealt with under part (B) at a later stage following further discussions between the parties.

(2) THAT the Private Hospital Employees' Award, 1972 be varied in accordance with the following Schedule and that such variation being made in relation to:

(a) paragraph (1), (4) and (5) of the Schedule in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case (print M9765), based on the key classification of Tradesperson Cook;

(b) paragraph (2) of the Schedule in accordance with Consumer Price Index adjustments, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 7, subgroup "Meals Out & Takeaway Foods" for September 1991 and September 1996 inclusive;

(a) paragraph (3) of the Schedule in accordance with a 1.1% increase in the Consumer Price Index adjustment for the quarters September 1991 to September 1996 inclusive, based on Australian Bureau of Statistics publication catalogue number 6401.0 at Table 6, subgroup "Clothing";

and these variations shall have effect from the first pay period commencing on or after the 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 9.—Allowances and Special Provisions: Delete the amount of $22.40 in subclause (1) and insert in lieu thereof the amount of $23.60.

2. Clause 10.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $6.60.

3. Clause 19.—Uniforms: Delete the amount of $3.95 in subclause (2) and insert in lieu thereof the amount of $4.00.

4. Clause 20.—Laundry: Delete the amount of $1.00 in subclause (2) and insert in lieu thereof the amount of $1.05.

5. Clause 34.—Wages: Delete the amount of $14.20 in subclause (4)(a) and insert in lieu thereof the amount of $14.90.

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 John of God Hospital and Others.

No. 1343(A) of 1996.

Private Hospital Employees' Award, 1972

No. 27 of 1971.

CHIEF COMMISSIONER W.S. COLEMAN.

5 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 19 February 1997, the following correction is made—

1. Delete instruction (2) of the Order and replace with the following:

2. Clause 10.—Overtime: Delete the amount of $5.40 in subclause (4) and insert in lieu thereof the amount of $5.80.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

SOCIAL TRAINERS (NULSEN HAVEN) AWARD
No. A 11 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

Nulsen Haven Association (Inc).

No. 1345 of 1996.

Social Trainers (Nulsen Haven) Award

No. A11 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

20 February 1997.

Order.

HAVING heard Ms M. Robinson and later Ms R. Ho on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT the Social Trainers (Nulsen Haven) Award be varied in accordance with the following Schedule and that such variation being made in accordance with the formula set down by the Australian Industrial Relations Commission in the Furnishing and Glass Industry case

(print M9675), based on the key classification of Social Trainer and shall have effect from the beginning of the first pay period commencing on or after 12th day of November 1996.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

Clause 8.—Qualification Allowance: Delete the amount of $5.64 and insert in lieu thereof the amount of $5.95.

AWARDS/AGREEMENTS—Application for variation of—No variation resulting—

CAN MANUFACTURING (PRODUCTION AND MAINTENANCE—AMALGAMATED INDUSTRIES PTY LTD) AWARD
No. A4 of 1985

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch and Another

and

Westcan.

No. 474 of 1993.

Can Manufacturing (Production and Maintenance—Amalgamated Industries Pty Ltd) Award No. A4 of 1985.

COMMISSIONER R.N. GEORGE.

10 March 1997.

Order.

WHEREAS the Applicants sought and were granted leave to discontinue the application the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders:

THAT the application be and is hereby discontinued.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

FIRE BRIGADE EMPLOYEES' AWARD, 1990.
No. A 28 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Fire Brigades Board

and

United Firefighters Union of Western Australia.

No. 619A of 1995.

Fire Brigade Employees' Award, 1990, No. A 28 of 1989.

COMMISSIONER P E SCOTT.

20 February 1997.

Order.

WHEREAS this is an application for a variation to the Fire Brigade Employees' Award, 1990, No. A 28 of 1989 pursuant to section 40 of the Industrial Relations Act, 1979; and

WHEREAS the Commission commenced to hear the matter; and

WHEREAS during such hearing the parties sought an adjournment to allow them to have further discussions with a view to resolving the matter between them; and

WHEREAS the Applicant has by facsimile transmission dated the 18th day of February 1997 requested the dismissal of the application;

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 dismissed.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

RAC PATROL AND MECHANICAL SERVICES AWARD 1993
No. A14 and 1235 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metals and Engineering Workers' Union—Western Australian Branch

and

Royal Automobile Club of W.A. (Inc.).

No. 681 of 1995.

COMMISSIONER J. F GREGOR.

25 February 1997.

Order.

WHEREAS on 16 June 1995 the Metals and Engineering Workers' Union applied to the Commission for variation of the RAC Patrol and Mechanical Services Award 1993 to increase wages following decision of the Australian Industrial Relations Commission in a National Wage Case Print No. L5300; and

WHEREAS the Commission heard the matter on 28 July 1995 thereafter the application was subject to four conferences held pursuant to Section 32 of the Industrial Relations Act, 1979 on 4 October 1995, 17 and 27 October 1996 and the 17 January 1997; and

WHEREAS at the conference held on 17 January 1997 the parties having observed that there would be a hearing by the Australian Industrial Relations Commission of a new National Wage Case and the obligation therefore for the State Commission to consider any decision of the Australian Commission arising there from that the application be adjourned sine die; and

WHEREAS the Commission granted the adjourned on the condition that if the applicant had not advised the Commission of its further intentions concerning the application by 25 February 1997 then the application would be discontinued; and

WHEREAS no substantial reason to keep application on foot was given prior to 25 February 1997;

NOW THEREFORE pursuant to the powers contained in the Industrial Relations Act, 1979, the Commission hereby orders:

THAT the application be and is hereby discontinued.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

BOARDS OF REFERENCE— Decisions of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Cloisters Securities Pty Ltd
and
Construction Industry Long Service Leave Payments Board.
No. BOR 4 of 1996.
COMMISSIONER P E SCOTT.
20 February 1997.

Order.

HAVING heard Mr M Atkinson (of counsel) on behalf of the Applicant and Ms S Saraceni (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 this application be, and is discontinued.

(Sgd.) P. E. SCOTT,
[L.S] Commissioner.

SECTION 23— Miscellaneous matters—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Metals and Engineering Workers' Union—Western Australian Branch & Others
and
Coca-Cola Bottlers Perth.
No. 678 of 1995.
COMMISSIONER J. F. GREGOR.
25 February 1997.

Order.

WHEREAS on 16 June 1995 the Metals and Engineering Workers' Union applied to the Commission for variation of the Coca Cola Bottlers, Perth (Maintenance & Bevtex Employees) Award to increase wages following decision of the Australian Industrial Relations Commission in a National Wage Case Print No. L5300; and

WHEREAS the Commission heard the matter on 28 July 1995 thereafter the application was subject to four conferences held pursuant to Section 32 of the Industrial Relations Act, 1979 on 4 October 1995, 17 and 27 October 1996 and the 17 January 1997; and

WHEREAS at the conference held on 17 January 1997 the parties having observed that there would be a hearing by the Australian Industrial Relations Commission of a new National Wage Case and the obligation therefore for the State Commission to consider any decision of the Australian Commission arising there from that the application be adjourned sine die; and

WHEREAS the Commission granted the adjourned on the condition that if the applicant had not advised the Commission of its further intentions concerning the application by 25 February 1997 then the application would be discontinued; and

WHEREAS no substantial reason to keep application on foot was given prior to 25 February 1997;

NOW THEREFORE pursuant to the powers contained in the Industrial Relations Act, 1979, the Commission hereby orders:

THAT the application be and is hereby discontinued.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Adrian Farcas
and
Eclipse Corporation Pty Ltd.
No. 1541 of 1996.
COMMISSIONER C.B. PARKS.
26 February 1997.

Reasons for Decision.

THE COMMISSIONER: The respondent creates multi media productions which, so far as is relevant to the matter before the Commission, involves the design and production of audio-visual presentations via computer and their final recording on compact disc. Mr Farcas was engaged by the respondent as a Multi Media Programmer who, on 18 October 1996 after one month of employment, was dismissed by the respondent, he claims unfairly. On the evening of 18 October 1996 Mr J.R.B. Verco, the General Manager for the respondent, dismissed the applicant in the presence of Mr M. Rowe, the Production Manager for the respondent. The dismissal was effected immediately and a payment said to be two weeks salary in lieu of notice was made to the applicant shortly following that day.

The essence of the applicant's case is that the programming of five multi media productions was allocated to him during his period of employment and that he completed those projects in the manner required, and the time allocated, by the respondent and therefore no justifiable reason existed for his dismissal. Mr Farcas asserts that the respondent never complained to him about his work performance during his period ofemployment. Further, at the time his dismissal was effected, no reason for such was initially provided to him but that, because of his repeated insistence that he be provided with the reason, he was finally told that he placed a higher priority on being with his family than working the hours necessary to complete multi media productions. That he says was neither a valid reason nor a justifiable one. The respondent asserts that Mr Farcas performed programming duties in relation to six multi media projects. That, in relation to five of these he presented them to his superiors as completed but each contained programming errors for which he was responsible and that caused the completion of the productions to be delayed beyond the deadlines required by the respective clients, it is claimed. Those errors were, in the majority of cases, said to have been rectified by Mr M. Rowe or Mr M. Maggs. And, one project, a compact disc compiled to promote the respondent's, business, Mr Farcas is said to have unjustifiably failed to achieve the required balancing of audio levels reproduced by the disc and expressed the view that such could not be technically achieved through the programming process however, Mr Rowe completed that work, and did so using that process. The applicant conceded that he did not achieve the audio balance expected of him and that he held the opinion that a different process was necessary. The respondent claims that the applicant had been engaged on six months probation and that during the month he had served there had been occasions he was told that his performance was not satisfactory.

According to the respondent, on the evening of 18 October 1996, it was stated to Mr Farcas that his work performance had been unacceptable and therefore the employment relationship was being ended however, before any further explanation could be given, the applicant reacted with anger, commenced shouting, stated that Mr Verco had a racist motive for the dismissal, physically poked Mr Verco in the chest, and threatened him with physical violence and death. It is denied by the respondent that the applicant was told his dismissal was the consequence of his family taking priority over his work. Mr Farcas concedes that when, on 18 October 1996, he was told that his employment was being terminated he became angry and began shouting. That anger he says arose from his frustration with Messrs Verco and Rowe initially refusing

to provide him with the reason for the termination, but Mr Farcas denies that he poked Mr Verco in the chest, or suggested there was racism involved, or threatened him in any way.

It is not in dispute that Mr Farcas was informed of the completion deadline date of each project for which he had been responsible regarding programming work. I am satisfied that programming provides the control elements for whatever audio and visual effects are used to create a given multi media production and, by its nature, is therefore the task which is last completed to finalise the practical operation of a production. Hence, the time available to Mr Farcas to complete his work prior to the completion deadline for a given production depended upon when co-employees, eg. graphic artists, completed their elements of that production.

On more than one occasion Mr Farcas asserted that every production he had worked upon the graphic artists did not complete their work until Friday of each week and, as a consequence, he was forced to work excessively long periods of consecutive hours during weekends to meet the deadlines which occurred early in each next following week. These assertions were made, I assume, to convey that Mr Farcas had been conscientious toward his job, he worked under difficult circumstances, and that ought outweigh any failure on his part to achieve the performance required by the respondent, if that had not been met, but which he did not concede. Mr Farcas also gave testimony regarding individual productions as to when he worked upon them and when their deadlines occurred which was in direct conflict with his other testimony. Messrs J.R.B. Verco and M Rowe both said that Mr Farcas had not been required to perform his work in the circumstances claimed by him. Their evidence was that deadlines had occurred times different to those stated by Mr Farcas.

Messrs Verco and Rowe assert that on the evening the applicant was dismissed he conducted himself in a particular manner and made threats toward Mr Verco. This is denied by the applicant. There is testimony from Messrs Verco and Rowe that although Mr Farcas departed the premises of the employer without further incident, they feared for their future wellbeing and for the safety of their employer's property. That caused them to inform the police of the incident forthwith. Exhibited to the Commission are two handwritten notes (exhibits G and I) one made by Mr Rowe, and the other by Mr Verco, both dated 18 October 1996, that record their recollection of what was said by Mr Farcas which was of concern to them, and which were written on the material evening and provided to the police. These handwritten notes contain statements and threats said to have been made by Mr Farcas. They are not identical in their text but display, in most respects, the same tenor. That the contents of their notes are not identical in their expressions leads me to believe they are not concoctions by them but their independent recollections of the essence of what had been said in a tense situation. Additionally, I have no reason to doubt the veracity of Mr Rowe nor Mr Verco. Overall I prefer the testimony of Messrs Verco and Rowe where it differs with that of Mr Farcas on the salient matters.

The applicant entered into a contract of employment expressed in writing (exhibit A), and signed by him. That document contains the conditions that he serve a six month probation period, and also, that during this period his employment may be terminated by the respondent for unsatisfactory performance, without a period of notice. Notwithstanding this right the respondent elected to pay Mr Farcas two weeks pay in line with the benefit which is prescribed for beyond the completion of the probationary period.

I am satisfied that Mr Farcas did work upon the "Grain Pool" production, which he denies, and that following the completion of that production he attended a meeting regarding that production. That meeting was addressed by Mr Verco who there emphasised the importance to the business of establishing accurate time frames for work to be done and then completing the work within that time. I find that each of the four other productions, prepared for clients of the respondent, which Mr Farcas submitted to either Mr Verco or Mr Rowe as completed products did not meet their deadline dates because of corrections, and on occasions recorrections, required to the programming work for which Mr Farcas had been responsible. The Respondent therefore had justifiable reason to terminate the employment of the applicant for unsatisfactory performance. Mr Rowe, I believe, informed Mr Farcas during the course of his employment that he was not satisfied with his performance and he was required to improve.

After this warning, on 17 October 1996 the day prior to his dismissal, Mr Farcas submitted to his superiors the "MRD" production as complete and for presentation to the client on that, the deadline date. Both Messrs Verco and Rowe reviewed the production and found it to contain programming errors which Mr Farcas should have identified and corrected. The necessary corrections were effected by Mr Rowe. I am therefore satisfied that the respondent did not act unfairly, when, on the following day, it terminated the employment of the applicant.

Appearances: Mr Farcas appeared on his own behalf.

Mr S.R. Boyle (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Adrian Farcas
and
Eclipse Corporate Pty Ltd
No. 1541 of 1996.

COMMISSIONER C.B. PARKS.

26 February 1997.

Order.

HAVING heard the applicant on his own behalf and Mr S.R. Boyle (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 this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wade Leyland Gould
and
Waltons Geraldton.
No. 1713 of 1996.

COMMISSIONER P E SCOTT.

24 February 1997.

Reasons for Decision.

THE COMMISSIONER: This is an application by Wade Leyland Gould that he has been unfairly dismissed from his employment with Waltons. He says that this arose due to his reporting of an incident to Worksafe and that this was the reason for his termination of employment. The nature of the employer's business is that it sells and services agricultural machinery. The Applicant commenced employment on 22 January 1996 as a heavy duty mechanic. He had undertaken a pre-apprenticeship course and then completed his apprenticeship with Westrac Equipment. It is accepted by all of the witnesses that in about his second year of apprenticeship, the Applicant approached Geoffrey William Gray, the Service Manager of Waltons, looking for a possible position there to transfer his apprenticeship. He discussed with Mr Gray difficulties he was having with his then current arrangements however, Mr Gray encouraged him to resolve those matters and continue to work with Westrac and complete his apprenticeship. At such completion he should come back and talk to them about the prospect of working for Waltons. This he did. The evidence was that Mr Gray and Robert Mann, the General Manager of Waltons, interviewed the Applicant. Mr Gray

advised the Applicant of the requirements of the Respondent in terms of the approach to work that was required.

It appears that in the first months of employment the Applicant's presentation and work habits were raised with him by Mr Gray in an informal way. Mr Gray also gave evidence that he discussed both on an informal basis and in formal private discussions with the Applicant in his office, areas where he needed to improve. He discussed with him quality of work issues. It is clear that Mr Gray is a very encouraging and supportive manager. The Applicant described him as a "best mate/father figure" and "one of the best people I have ever known" (Transcript page 14). He had helped the Applicant with technical advice and drew attention to areas where he had gone wrong. They discussed problems associated with work. Whilst the Applicant says that he was never formally warned or told, in his words, to "lift my game" (Transcript page 6), in cross examination he acknowledged that Mr Gray spoke to him about improving the time he took to do his work and "this is where you've got to do ... do a bit better of a job", or "lift your game here, sort of thing, to improve your ... improve yourself as a trades person" (Transcript page 14). There were discussions both informally and also private discussions in Mr Gray's office. However, he did not believe that he was ever told that he could not continue to do as he was doing.

At approximately 2.00pm on Tuesday 22 October 1996, the Applicant was working with a trades assistant to remove from a piece of equipment the 30 foot cutter bar weighing approximately 150 kilos. In his evidence, the Applicant says that this was placed on three 205 litre drums, however , Mr Gray says that when he went out a few minutes later he saw only two drums. In any event, in the process of lifting the bar, the trades assistant, Chris Steele lost his footing, fell backwards and the bar struck him in the head. Mr Steele was taken to hospital. The Applicant gave evidence that he was distressed over the incident. The next day Mr Gray discussed the incident with the Applicant and what had gone wrong in the process. Mr Mann also approached the Applicant that day and asked him what had happened and why it had happened. The Applicant says that "I volunteered that my lack of experience in this area had contributed and know now that common sense should have told me not to attempt the task without the proper lifting equipment. We were lifting a weight far beyond safety limits and were not provided with mechanical aides to assist us" (Transcript page 6). In response Mr Mann told the Applicant in no uncertain terms that "if this happens again you are down the road" and, according to the Applicant used abusive language. The Applicant says that he took this more as a threat than a warning.

On that day, the Applicant reported the incident to Worksafe. The Applicant says that it was this reporting of the incident to Worksafe which brought about his demise. The Respondent denies this most vehemently. Both Mr Gray and Mr Mann say that they did not know until the notice of application regarding the unfair dismissal and other documents were presented to them that it was the Applicant who had reported the matter to Worksafe. When Mr Mann received a call from a Worksafe inspector he assumed that it was the doctor who had treated Mr Steele who had reported the matter or, alternatively, that such an inspection by machinery inspectors is not unusual and therefore he was not surprised when he received the telephone call to arrange this inspection.

The Applicant says that he was in Mr Gray's office several days after he had reported the matter to Worksafe and that Mr Gray showed him a letter that was received by Waltons from Worksafe stating that they would be inspected next time an inspector was in the area as a result of a complaint received. The Respondent denies that any such letter was received. Mr Gray, in evidence, said he did not recall seeing a letter from Worksafe and Mr Mann says that he also has no recollection of such a letter and it is not contained within the papers of the Respondent dealing with the matter.

The Applicant says that on 20 November 1996 he had asked to take a day's annual leave and was advised that he could take leave permanently and his employment was terminated.

The Applicant says there was no formal warning process and that he received no warning in writing. He maintains the view that it was as a result of his reporting of the incident to Worksafe that his employment was terminated.

The Respondent says that the termination of employment came about as a result of the Applicant's attitude which affected his work performance. Both Mr Gray and Mr Mann say that the Applicant was spoken to on a number of occasions about particular problems associated with certain jobs as well as about his general attitude and approach to his work. The Commission heard evidence of a number of difficulties associated with work performed by the Applicant. Mr Gray gave evidence that he was aware that Mr Mann had told the Applicant that he had had his final warning. There was one final matter which involved the completion of work on a Fiat which the Applicant had to redo. Mr Gray says that it was still not to his satisfaction. Mr Gray believed that the Applicant had been told a number of times of the need to improve his attitude and performance. He also believed that there were also other incidents in which the Applicant bore responsibility. He said that he had made it clear to the Applicant a number of times that if he did not improve there would be no further opportunity for him with the company. He believed that the Applicant had had enough warnings and bearing in mind the final warning had been given by Mr Mann following the incident regarding the cutting bar, it was discussed between the two of them and decided that the employment ought be terminated.

Mr Mann says that he discussed the issue of the Applicant's attitude with Mr Gray a number of times and with the Applicant also. He was aware of discussions between the Applicant and Mr Gray in the workshop and in Mr Gray's office. He says that the termination of employment was not related to any issue of the Applicant's lack of qualification. He believed that he was qualified although he had difficulty with his attitude which made him perform below his capacity and potential. The Applicant was said by Mr Mann to need to grow up. The termination of employment was not undertaken lightly on the basis that mechanics are hard to find and there is competition for them with the mining industry.

I have noted the affidavits put forward on behalf of the Applicant being, in effect, references, from P Walmsley and E Cameron. These relate to the Applicant's previous employment as an apprentice with Westrac Equipment from 1991 and whilst they may indicate his performance and attitude during that time they do not deal with his performance and attitude during his time with the Respondent. The Commission has before it first hand evidence from witnesses for the Respondent which indicates to the contrary and the Commission is bound to apply greater weight to the evidence of those witnesses than to evidence provided through affidavits where the persons making the statement are not available for cross examination. Likewise, the Commission places little weight on the affidavit sworn by Ken Jansen, as he was not available for cross examination and his veracity as a witness was not able to be judged.

The Industrial Relations Act 1979 provides in Section 29 that an employee may refer a claim to the Commission that he has be harshly, oppressively or unfairly dismissed from his employment. Section 23AA provides:

> **23AA.** (1) On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified.
>
> (2) If—
>
> (a) the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified; or
>
> (b) the employee establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair,
>
> the claim is taken to have been established.
>
> (3) For the purposes of this section, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct, or based on the operational requirements of the undertaking, establishment or service, for the dismissal.

The basis upon which the Commission is to consider unfair dismissal cases was set out by the Industrial Appeal Court in Shire of Esperance and Peter Maxwell Mouritz (71 WAIG 891 at page 898). Kennedy J. noted the decision of Walsh J. in

North West County Council v Dunn [1971] 126 CLR 247 at 262:

> "It is not the province of the Commission, in the exercise of the jurisdiction conferred on it by the Industrial Arbitration Act to take over the functions of the employer in relation to the selection and retention of employees, and it will intervene only when its intervention is necessary to protect an employee against an unjust or unfair exercise of the employer's right of dismissal, a right which is as fundamental in the relationship of the employer and the employee as is the right of the employee to leave his employee."

Walsh J. also went on to stress, at 263, that it is not a question as to the parties' respective legal rights, but a question of whether the legal right of the employer has been exercised so harshly or oppressively against the employee as to amount to an abuse of that right. He accepted, citing McKeon J. in *Western Suburbs District Ambulance Committee v Tipping* [1957] AR 273 at p 280 that a proper test is to ask the question: "has there been or has there not been oppression, injustice or unfair dealing on the part of the employer towards the employee?"

The Industrial Appeal Court in Shire of Esperance and Mouritz (op cit) also sets out that the principles of natural justice are attracted to certain categories of dismissal. Rowland J. says:

> "Of the three categories of dismissal identified by Lord Reid in *Ridge v Baldwin* [1964] AC 40 at 65, it seems patent on the facts in this proceeding that the Respondent's case fell into the third class—namely, dismissal from office where there must be something against a man to warrant his dismissal. Cf *Barnes v Oliver* [1970] 16 FLR 336 at 372, 374 and 393. His Lordship was in no doubt that this third class attracted the principles of natural justice. Accordingly, the Respondent was entitled to a hearing and to a detailed statement of the charges to be answered as well as time to prepare his defence."

It is also noted in the conclusions at page 898 of Shire of Esperance and Mouritz (op cit):

> "For the reasons I have given, I consider the Full Bench was correct in its conclusions that the Respondent had not been given a fair hearing by the Appellant. That is an element in determining whether the dismissal was harsh or unjust—*Macken, McCarry and Sappideen*, *"The Law of Employment"* 3rd ed, 277-8. As there explained, the mere fact that the employee did not have a proper opportunity to explain or has not been warned of the possibility of termination does not automatically entitle the Applicant to a remedy. No injustice will result if the employee could be justifiably dismissed. Here, as the reasons of the President and Rowland J. make apparent the issue of dishonesty as a basis for dismissal remains undetermined. The unfairness of the dismissal cannot be determined by the procedural unfairness alone."

I am satisfied that the employer has demonstrated that there are grounds upon which the dismissal was justified in that there was a valid reason for termination related to the employee's capacity and conduct. I note the submission for the Applicant that there was no formal written warning process. There is no such legal requirement for a formal written warning process. It may be said that the provision of warnings in writing constitutes, in some cases, a desirable human resource management practice but it is far from being a requirement. What is necessary is that the employer make clear to the employee those areas of failing, provide opportunity to remedy those failings and also to make clear the job is in jeopardy should improvement to the standard required not occur. The test to be applied by the Commission, generally speaking, is one of "a fair go all round". This jurisdiction does not place a preeminent weight upon procedural fairness which might have occurred elsewhere. It is a fair go all round, in all of the circumstances, which is appropriate test. (Undercliffe Nursing Home and FMWU (65 WAIG 385))

In this particular case, where there is conflict in the evidence I have no hesitation in accepting the evidence of Mr Gray. I found him to be someone who quite clearly gave assistance and encouragement to employees under his control and who brought to their attention those areas which required improvement. He has a genuine interest in his employees and appears to be worthy of the respect given to him by the Applicant. There was no suggestion that his word could not be accepted and I believe him to be a witness of truth. On this basis, I accept without reservation his evidence that the Applicant was capable of performing the work but had difficulties associated with his attitude which prevented him from undertaking his duties to the satisfaction of the employer. I accept that these areas where drawn to his attention and he was given encouragement and assistance to overcome those difficulties. He was provided with pay rises as a means of encouraging and rewarding improvement however he appears to have slipped back into his previous unsatisfactory approach to work and was told by Mr Gray that a lack of improvement would mean there would be no room for him to continue in employment. In terms of the incidents which are said to have been his responsibility, he has accepted some of that responsibility. Mr Mann indicated that he would have been prepared to reinstate the Applicant had he apologised for his actions but that it was his attitude which prevented reinstatement occurring.

I am satisfied that the Respondent was not aware that the Applicant had reported the incident to Worksafe and that this had no part to play in the decision to terminate his employment. It should be noted that it is for he who asserts to prove. The Applicant has not proven that the Respondent had any knowledge of the Applicant's involvement in this matter of the report to Worksafe. Quite apart from the Applicant's belief that the reason for his demise was his reporting of the incident to Worksafe, there also appears to be a view taken for the Applicant that the termination of employment was unfair on the basis that no written warnings were provided. I have dealt with this matter earlier in these reasons for decision but reiterate that this lack of formal written warnings does not of itself make the dismissal unfair. The requirements for the Applicant to be given a fair go have been provided by the Respondent. His areas of deficiency were drawn to his attention, he was given opportunity to improve those areas, he was given assistance to do so and yet he did not improve to the standard required. He was advised that his employment was in jeopardy. On all of these basis, I find that it has not been demonstrated that this dismissal was harsh, unjust or unfair.

If there is any failing on the part of the Respondent it is that immediately prior to the dismissal the Applicant was not taken aside and the reasons for dismissal explained to him with him being given an opportunity to respond. In terms of procedural fairness, this limited aspect is lacking, however, I am satisfied that on balance, the Applicant was provided with the necessary opportunities and assistance to improve and made aware that has his position was in jeopardy. He continued to perform unsatisfactorily. Considering all of the circumstances surrounding the dismissal, this lack of a final discussion does not of itself make the dismissal unfair.

On this basis, the application will be dismissed.

Appearances: Ms J K Gould for the Applicant.

Mr A Charlesworth for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Wade Leyland Gould
and
Waltons Geraldton.
No. 1713 of 1996.
COMMISSIONER P E SCOTT.
24 February 1997.

Order.

HAVING heard Ms J Gould on behalf of the Applicant and Mr A Charlesworth 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 dismissed.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Healey

and

Targaze Pty Ltd T/A Integrated Workforce.

No. 1439 of 1996.

COMMISSIONER A.R. BEECH.

21 February 1997.

Reasons for Decision.

THE COMMISSIONER: The respondent in this matter is a labour hire company which supplies casual labour to industry as the demand requires. In early September 1996 it placed an advertisement in the local newspaper for personnel, including industrial cleaning and spraying personnel, on behalf of its client Gardner Perrott. At that stage, Gardner Perrott had informed the respondent that it had approximately two to four weeks' work during a shutdown at the BP Refinery, Kwinana. Mr Healey responded to the advertisement and, after being interviewed by the respondent, was placed in its books for that work. At that stage, the work was due to commence on the 16th September 1996 (exhibit C).

On the 11th and 12th September 1996 Mr Healey attended two induction courses conducted by Gardner Perrott and BP Refinery in preparation for the work. He was paid for those two days, although there was some delay in the payment for the second day. On Friday 13th September 1996, he was informed by the respondent that he would be commencing on site on the following Monday, the 16th September 1996. In consequence, he resigned from his existing job as a courier driver.

However, on the morning of the 16th September 1996, he contacted the respondent and was told that the work had been put off until the 17th September 1996. He contacted the respondent on the 17th September 1996 and was told the work had been put back to the 18th September 1996. On each morning that he rang the respondent he was told the job had been put off by a day. In fact, Mr Healey did not commence to work on site at all. The following week, he himself visited the site in order to find out what was going on and was told that the work had commenced. He states that he has never officially been told by the respondent that he would not be working on the site and he complains that he was kept waiting for so long that he lost wages waiting to be given the start time on the job. By this application he complains that he was unfairly dismissed by the respondent and that he should be compensated for the wages that he would have earned for that period.

This claim is brought to the Commission by Mr Healey as an individual employee and the jurisdiction of the Commission to deal with such a claim is more narrow than if it had been brought by a union or an employer. The Commission can only become involved in this matter if Mr Healey has been dismissed by the respondent, as he now claims. If he has not been dismissed, then his claim fails. I feel some sympathy for Mr Healey's position. On the promise of work starting on Monday the 16th September 1996, in good faith he gave up his job as a courier driver. He was interested in the work to be performed with Gardner Perrott and has considerable and valuable experience in that regard. It is, apparently, his preferred employment. He therefore took steps to ensure that he was available when the job would commence. In fact, due to circumstances which are not entirely clear, the start date for the shut down was put back to an extent which meant that Gardner Perrott no longer needed staff supplied by Integrated Workforce and no staff were, in fact, supplied by the respondent for that job. While Mr Healey was not aware at the time of the reason for the delays, I am satisfied from the evidence produced by the respondent in these proceedings that the events did occur as the respondent now describes. The consequence to Mr Healey however, is that he held himself in readiness to commence employment with Gardner Perrott and, as a consequence, did not earn any income over that period.

However, I do not think that Mr Healey was dismissed by the respondent. The evidence shows that Mr Healey was indeed a casual employee of the respondent. While he was registered with them, and was accepted by them to work on a specific project, the operation of the respondent is such that the work it finds for its employees registered with them on a casual basis does depend on the requirements for labour imposed by the respondent's own clients. What happened in this case is that Mr Healey was placed on the books as a casual and was told that a particular job for him was to start on the 16th September 1996. However, in reality, Mr Healey was able to seek alternative employment at any time and was under no obligation to hold himself in readiness to start at Gardner Perrott's on the 16th September 1996. Certainly, he chose to do so, but because he wanted to work there. In this regard, I accept the evidence of Mr Creed that a casual employee on the respondent's books is under no legal obligation to accept the work that may be offered to them by the respondent. Thus, the respondent may well undertake to supply labour on a given day, and arrange with one of its casual employees to be there at the job. If, however, the casual employee finds a better alternative job elsewhere, the employee is free to accept it. The work did not eventuate and Mr Healey, other than for the two days' induction, was not, in fact, offered any work. But he was not dismissed. Effectively, he remains on the books as a casual employee of a labour hire agency. He is able to ring them to see if any work is offered. In fact, he informed the Commission that he telephoned in relation to another job some weeks later. As I understand his evidence, he was accepted as still being on the books of the respondent, but that other people had telephoned ahead of him and he was not at the top of the list for having employment offered to him. However, the fact remains that the respondent did not dismiss Mr Healey. As a result, his claim will be dismissed.

I add that, as far as I am able to tell, the contract of employment between Mr Healey and the respondent does not oblige the respondent to find work for Mr Healey. Mr Healey may contact them daily, but if work is not provided by the respondent, there is no breach of the employment contract between them. On that basis, although the respondent may have indicated to Mr Healey on Friday 13th September 1996 that he would be commencing work at Gardner Perrott on the following Monday, in reality the respondent is saying that we believe the job will start on the following Monday, ring us then and we will let you know. While that may not be satisfactory from the point of Mr Healey planning whether to resign from existing employment or not, it is the consequence of the operation of the respondent's business.

For all of the above reasons I find that Mr Healey has not been dismissed as he claims, and his application fails.

Appearances: The applicant on his own behalf.

Mr A. Randles on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Healey

and

Targaze Pty Ltd T/A Integrated Workforce.

No. 1439 of 1996.

COMMISSIONER A.R. BEECH.

21 February 1997.

Order.

HAVING heard Mr Martin Healey on his own behalf as the applicant and Mr A. Randles 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.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Natasha Lee Hester

and

M G McKay Pty Ltd T/A Odin Tavern.

No. 1531 of 1996.

COMMISSIONER J.F.GREGOR .

5 March 1997.

Reasons for Decision.

THE COMMISSIONER: On the 24 October 1996 Natasha Lee Hestler (the applicant) applied to the Commission for an order pursuant to Section 29 of the *Industrial Relations Act 1979* (the Act), on the grounds that her dismissal from employment with M G McKay Pty Ltd T/A Odin Tavern (Odin Tavern) was harsh, oppressive and unfair.

According to the applicant she commenced employment with the Odin Tavern after she had been approached by Mark Gordon Timms, her cousin, who was also the chef at the tavern. She commenced work on the 14 June 1996 and continued until her dismissal on the 19 October 1996. She worked as a kitchenhand on a casual engagement where she was required for duty on three days per week. Each week the chef would ring her and tell her shift times. Soon after she commenced duty she was given a sheet which contained general information for employees of the Odin Tavern (*Exhibit C1*). That document, which she says in her evidence she read, set down the regulations applicable to staff concerning areas of access, meals and beverages, dress regulations and bar etiquette amongst other things. The applicant says that there was an arrangement whereby she could take food from the kitchen with the permission of the chef. This permission she says she sought every time she took food. If the food she took was past its use by date there would be no charge but if it was still useable the chef would make an assessment of how much she should pay by looking at invoices and she would pay him in cash.

The applicant did not pay for all of the food for instance she admitted that she took carrot cake, again with permission, when the carrot cake was past its use by date and there were things like stale bread rolls that she removed as well. On one occasion she, with permission, made a quiche which she removed from the premises. When she took the quiche there was no other food removed. The chef had assessed the cost of the quiche at $12.00 which she paid. From time to time she took milk. No payment was made at the time she removed the milk but she would make arrangements to pay before the next pay day. Each time she did so she would give the money to the chef. In October 1996 an incident occurred where she found that there was a leg of lamb and 2kg of sausages in the storeroom. She thought they might not be used by the kitchen so she asked the chef if she could take them. He agreed and in due course she removed them from the storeroom and placed them in a container. She said she did so because she wished to place the container out the back of the store where she could drive and pick it up. This is so she did not have to carry the container through the drive-in of the tavern. There was evidence that on an occasion the chef had rung her on his mobile telephone from the carpark and asked her to bring a tub which had contained 5kg of margarine out to his car. The applicant gave evidence that the tub contained chopped carrots and some crumbed chicken. It was to be used at a function the chef was involved in. At all times the removal of the food was with permission of the chef. The applicant says she was surprised therefore when she received a phone call from the chef to say that his services had been terminated and so had hers. According to her version of events she received no communication from any other representative of management but in due course she made contact with the manager of the Odin Tavern, Gary Holbrook. He confirmed that she had been dismissed. Arrangements were made for her to pay for the goods that she had removed, that is the leg of lamb and the sausages and to collect her final pay.

It is argued on behalf of the applicant by Mr Crossley that the dismissal was unfair because she had received no warnings about removal of food, in fact she had been given permission from the chef who notwithstanding was her cousin was still the person in management control of the kitchen. No representative of management of the Odin Tavern approached her before she was dismissed and this was a denial of procedural fairness.

On behalf of the applicant evidence was taken from Mary Missios who is another worker in the kitchen. She gave evidence that from time to time she had been given permission to take milk from the kitchen by the chef but she had always paid for it. She knew that some out of date carrot cake had been taken by the applicant. Evidence was also taken from Mark Gordon Timms. Mr Timms says he employed the applicant because he knew she was a good worker having worked with her in other establishments. He freely admitted that he had given the applicant permission to remove food from the kitchen. He said that for other than for time expired food, money was always paid. He assessed the cost by looking at the receival invoices, making a calculation from them. He said he always paid the money from the applicant to the owners by having bar staff ring up the amount. Often this was done he said by allocating a price to the goods which coincided with the menu price for a meal and ringing up the transaction as if it were a meal. On other occasions the payments were recorded as function food. He said when the accounting machines produced a receipt, which under the system was an instruction to the kitchen to produce a meal, the receipt would be screwed up. He had no receipt of any payment made by him. Insofar as the removal from the kitchen of the margarine tub is concerned he recalled the tub but seemed not to recall that it had any food in it. Mr Timms was reluctant to concede that senior management had ever been raised with him any issues concerning the running of the kitchen. When pressed in cross examination he admitted that he was aware that the owners of the Odin Tavern were concerned about the profit levels of the kitchen. He was aware of their concern before the termination of his services. He said he was approached by Mr Holbrook on behalf of the company and dismissed after he was confronted with the information about removal of the lamb and the sausages. Immediately he rang his cousin and told her that he had been dismissed and so had she.

There is evidence from the respondent contrary to that presented by the applicant. Mr M G McKay the Managing Director of the company which owns the Odin Tavern gave evidence. He drew the Commission's attention to the profit figures (*Exhibit S1*) of the Odin Tavern. The accounting records disclosed that there had been an extremely poor performance by the kitchen at the Odin Tavern. This continued poor performance gave raise to concerns which he had raised regularly at management meetings which was attended by the chef. After careful examination of the figures the company had reached the conclusion that there was shrinkage in food stocks which could not be explained by normal losses. That being the case he instructed Mr Holbrook, the on site manager of the Odin Tavern, to ask staff in the kitchen to keep a watch to see if there was food being removed. He said after this instruction was issued there was an immediate turn around in the figures as disclosed in the accounts. Later, information was given to him that the applicant had been seen removing a leg of lamb and some sausages from the premises. He had also received information that crumbed chicken and a quantity of carrot cake had also been taken by her. This information came from other employees in the kitchen in particular the assistant chef Ms J Mason. Having established that food had been removed from the kitchen, Mr McKay concluded that the applicant and chef colluded in the unauthorised removal of food and issued instructions to Mr Holbrook that they both be dismissed.

In his evidence Mr Holbrook said he had told the chef that he was dismissed. In doing so he explained the reason why. He also told Mr Timms that the applicant would be dismissed too. Mr Holbrook attempted to contact the applicant but he was unable to do so. He left messages on her answering machine. The purpose of the call was, according to the evidence of Mr Holbrook, to invite the applicant to come and discuss the matter with him. Before he could make contact with the applicant Mr Timms, who knew how to contact the applicant, had let her know that his contract of employment had been terminated and that hers was as well. Mr Holbrook's evidence was that at no time was Mr Timms acting on behalf of the management of the Odin Tavern, it was Mr Holbrook's

responsibility to tell the applicant that her services were terminated. In due course the applicant did contact him. Arrangements were made for her salary to be picked up and for the food to be paid for. The matter was reported to the police who commenced investigations.

During his evidence Mr McKay referred the Commission to the daily journals of the Odin Tavern covering the months from July to October 1996 (*Exhibit S2*). He identified those parts which contained information concerning miscellaneous income. Apart from two entries, which he explained, there were no entries that indicated food had been paid for in the manner claimed by the applicant and Mr Timms. Mr McKay said that it was not possible with the sophisticated accounting system for payments to be made in any other way. For instance if a payment was rung up as if it were for a meal, the electronic accounting system produced a docket which went to the kitchen with an instruction to prepare a meal as described, but it also produced another docket which was for reconciliation purposes. At no time during the period of employment of both Mr Timms or the applicant was there any failure to reconcile. The conclusion that must be drawn, according to Mr McKay, is that payments were not made.

The Commission also heard evidence from Ms J Mason. She related the practice in the kitchen that if someone needed some milk and they were working a late shift they could, with permission of the chef, take milk home. There are other instances when food could be purchased. When Ms Mason made purchases that she would ensure that payments had been made, but for the most part the monies were collected by the chef. Ms Mason gave evidence that she had seen the applicant prepare a quiche during working hours. She understood that to be with the permission of the chef. Ms Mason said though, when the applicant removed the quiche from the kitchen she also took crumbed chicken. This was not paid for as far as Ms Mason knew. Insofar as the carrot cake is concerned the applicant did remove carrot cake which was expired but the chef reordered carrot cake to replace it. The replacement too was removed by the applicant. There was a further reordering of carrot cake. That too was not used and was also removed by the applicant.

Mr Crossley who appeared on behalf of the applicant argues that the dismissal was harsh, oppressive and unfair because of a number of deficiencies in the way the issue was handled. First, accordingly to Mr Crossley, the general information which is given to employees when they commence work, and it is admitted that the applicant received this information, does not deal with the issue of removal of food. It follows, so the logic runs, that if the chef as a representative of management, agrees to allow food to go from the kitchen then the applicant cannot be in breach of any duty if she avails herself of that advantage. In other words it was not made clear at any time to the applicant that what she was doing not countenanced by the employer. Mr Crossley also argues that the dismissal itself was executed improperly so that it creates unfairness. The argument is that the chef gave the applicant notice of her termination and in doing so he, by implication, was acting on behalf of the management. The applicant was given no opportunity to answer the complaints about removal of food and there is proof that she was not doing anything wrong because the police have not taken any action against her even though they investigated the matter. Mr Crossley referred the Commission to *Melissa Jaggard v. Tranby Pty Ltd T/A The Court Hotel (1996 76 WAIG 4720)* which he said is authority for the proposition that if a person is accused of stealing and the accusation is incorrect then the person is entitled to regard the contract is being at an end. Mr Crossley says that in view of the circumstances surrounding the termination and the accusations that have been made against the applicant it would be inappropriate to order reinstatement and he sought compensation in the form of eighteen (18) weeks salary.

Mr Smetana, who appeared on behalf of the Odin Tavern, argues that here is a clear case where an employee was in collusion with another employee who happened to be her cousin. Between them they deprived the respondent of goods which are it's property and made no payment for them. Mr Smetana argues that it had been made clear on a number of occasions by management of the Odin Tavern to the chef that there were problems with the profit performance of the kitchen, there was food shrinkage and there were doubts in the owners mind about how food was being managed. The chef did not have any authority at any time to give permission for food to be removed and he well knew it. The general information which is given to employees when they commence employment makes it clear that free meals are not provided by the establishment. By sensible implication it must be that food cannot be removed without payment in any circumstances. Claims by both the applicant and the chef that money was paid by them for the food taken, must be called into question. There is no record at all of monies being paid in for any of the food which is admitted to have been taken. The accounting system makes it impossible for payments to be made without traceable record. Mr Smetana cited an instance of a time when food was paid for and produced a receipt which demonstrated how payment for the food would be properly be brought to account (*see Exhibit S3*). It was passing strange to the respondent that the chef could not remember the names of any of the people he says he asked to process money into the till for food purchases. The evidence of Ms Mason proves that even if some food was paid for there was other food that was not paid for. For instance, the removal of crumbed chicken by the applicant. It is also clear that the applicant had removed the leg of lamb and the sausages before she had paid for them and it is nothing more than a convenience to her that she says she did not normally pay for food when she took it but paid for it later. Insofar as the termination of employment is concerned Mr Smetana says the chef had no authority to dismiss the applicant, that was Mr Holbrook's task once the chef had his own services terminated. Mr Smetana conceded that when the applicant eventually contacted Mr Holbrook that he could have raised the allegations with her but it appeared to Mr Holbrook that the applicant had accepted the dismissal. Even though Mr Holbrook may have been justified in believing that was the applicant's state of mind, nevertheless failure on his part to do so may disclose some procedural unfairness. But procedural unfairness is not the sole measure as to whether a termination is unfair or not, there are other factors which need to be taken into account. In this instance they are powerful factors which include the potential of theft having occurred.

Before I go to my analysis of the evidence I note that the question to be investigated when the Commission enquires into the termination of a contract of employment is whether the legal right of the employer has been harshly or oppressively exercised against the employer as to the amount of the abuse of the right as is described in *Miles & Others T/A Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1995) 65 WAIG 385 @ page 386*. It is also true, on the authority of *Margio v. Fremantle Arts Centre Press (1990) 70 WAIG 2559 @ 2561,* that an employee as far as practicable not be dismissed without a warning as to the possibility of dismissal. Of relevance here too are the principles outlined in *Shire of Esperance v. Mouritz (1991) 71 WAIG 891 @ 89* where Kennedy J wrote that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee is an element in determining whether the dismissal was harsh or unjust. In *The Federated Miscellaneous Workers' Union of Australia, WA Branch v. Board of Management, St John of God Hospital, Bunbury (1992) 72 WAIG 1274* the Full Bench of the Commission, when examining a similar case observed that it was wrong to take food off premises, it is wrong to pilfer and steal as this might merit dismissal. It added that stealing from an employer would in most cases constitute misconduct sufficient to warrant dismissal.

I turn to my view of the witness evidence. I first observe that I have considerable doubts concerning the quality of the evidence of the applicant as it was supported by the evidence of the chef. Their evidence is selective and has the hallmarks of collusion. For instance I do not accept the evidence of the applicant that she did not remove crumbed chicken. I favour the evidence of Ms Mason in preference to the applicant's in that regard. The applicant also omitted to tell the Commission that the incident with the removal of carrot cake was not restricted to one occasion but it happened on number of times. There are also differences between the evidence of the applicant and the chef. A reading of his evidence is that the margarine tub was empty when he received it whereas the applicant said it contained food that he had prepared in the premises of Odin Tavern for use elsewhere. Both the applicant and Mr

Timms say that money was paid from her to him and from he to the Odin Tavern. There is no proof that any payments were made to the Odin Tavern, not one receipt was produced. The claim that payments could be made without the true purpose for the expenditure is, being identified is on the evidence before the Commission, just not believable.

The applicant seems to argue that there was nothing ever said to her by anyone which would have raised doubts in her mind about whether it was right or not to remove food from the employers premises. First of all the general information given to new employees, which the applicant admits she has received, requires that the document be read and signed. It sets out specific duties in dealing with alcohol and smoking, it reserves to the management the right to search bags upon request, it provides in section 3 that free meals are 'NOT' (emphasis in original), provided by the establishment. It then sets out a detailed procedure as to how a meal can be taken and paid for. The procedure requires the name of the staff member must be written on docket and all meals dockets are to be balanced daily. According to the procedure no meal order is to be processed by a staff member for himself. There is then a detailed instruction as to how the staff meals must be processed from an accounting point of view. Anyone reading the document must be drawn to the conclusion that there are rigid rules about the supply of meals on the premises. To infer as does the applicant, that because the general information document does not say that food shall not be pilfered or removed and that employees are free to do so, stretches credibility. There would be no doubt that anyone reading the document with ordinary common sense and experience in the hospitality industry would or should know that food should not be removed from the kitchen.

There is a complicating factor in that the chef who was in effect the management representative was compliant in the arrangement. In fact it appears he took part in it himself. The fact is if one accepts the evidence of Mr McKay and Mr Holbrook in preference to Mr Timms, and I do, he was told on a number of occasions that there were problems with food shrinkage. He knew that the staff had been told to watch out for food being removed from the kitchen. Ms Mason knew to watch out and she did so. It is strange that the applicant did not appear to know that the Odin Tavern managers had mentioned concerns about removal of food. One can only conclude that she did. She entered into the arrangement with the chef knowingly, it was convenient to her, she supplied food to her parents saying on occasion that she needed two lots, one for her mother and one for her father. There is no doubt that the conduct of the applicant, and I so find, was fundamentally in breach of her contract of employment.

There may be flaw in the way that the dismissal was handled. My view of it is though Mr Timms was never given the authority to dismiss the applicant even though he might have had the right to hire. In the circumstances having discovered there was food missing, the Odin Tavern on the evidence provided by Ms Mason, dismissed the chef. I accept Mr Holbrook's evidence that he told the chef that he, Mr Holbrook, would ring the applicant. Mr Holbrook tried to do so however he was unable to make contact before the chef did. The applicant knew full well when she contacted Mr Holbrook that her services were terminated and it open on the evidence to conclude that there was an acceptance by her of the dismissal at that stage which would justify Mr Holbrook not going through a process of discussion with her. Be that as it may it could be found that because he did not do so there was an element of procedural unfairness in the way the termination occurred, however that is not fatal to the respondent's proper termination of the contract. On the authority of *the Shire of Esperance V Mouritz* (Ibid) procedural fairness is but one of the elements to be considered in judging whether a termination is harsh, oppressive or unfair. An employer has a right to expect that the employees will behave in an honest manner even though the applicant in this case may have been assisted by the way the chef approached his responsibilities. On the basis of the information that she received when she was employed and information she received later the applicant should have known that the removal of goods from the premises in the sometimes surreptitious way she did was wrong and would put her continued employment at risk.

In all the circumstances on the test which is set out in *Miles & Others T/A Undercliff Nursing Home v The Federated Miscellaneous Workers' Union* the dismissal in this case has not been exercised so harshly or oppressively against the applicant as to amount to an abuse of the employers right to dismiss.

If I am wrong about the mode of termination I find that the applicant was a casual employee as described by the Full Bench in *Metals and Engineering Workers Union—Western Australia v. Centurion Industries Ltd 76 WAIG 1287*. The applicant entered into a series of separate and distinct contracts for a fixed period. This was done by the chef calling her each week to confirm the work arrangements for the coming week.

An order dismissing this application will issue.

Appearances: Mr T Crossley appeared on behalf of the Applicant.

Mr A Smetana, The Chamber of Commerce and Industry, appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Natasha Lee Hester

and

M G McKay Pty Ltd T/A Odin Tavern.

No. 1531 of 1996.

COMMISSIONER J.F. GREGOR.

5 March 1997.

Order.

HAVING heard Mr T Crossley on behalf of the Applicant and Mr A Smetana on behalf of the Respondent, pursuant to the powers contained in the Industrial Relations Act, 1979, the Commission does hereby order:

THAT the application be and is hereby dismissed.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie George Magyar

and

Ursula Frayne Catholic College (Inc).

No. 1746 of 1996.

COMMISSIONER A.R. BEECH.

7 March 1997.

Reasons for Decision.

THE COMMISSIONER: Mr Magyar was employed by Ursula Frayne Catholic College (Inc) (the College) as a teacher teaching specialised computer subjects from January 1990 until his dismissal on the 5th November 1996. He complains that his dismissal was harsh, unfair and unjust and he seeks reinstatement. The College strongly opposed Mr Magyar's claim. His application was heard over four days and involved evidence from Mr Magyar himself and from five witnesses called by him. The College's case consisted of evidence from the then Principal of the College, Mrs Parker, together with evidence from five witnesses called by the College.

The decision to dismiss Mr Magyar was made by Mrs Parker (after some consultation with other persons) following a formal investigative process called a "summative appraisal" initiated by her and the report of a moderation visit conducted by the Secondary Education Authority for Mr Magyar's course. These, together with Mrs Parker's own conclusions, formed the basis of the decision to dismiss.

It is appropriate to note prior to commencing that the task of the Commission is not to put itself in the place of the employer and decide what the Commission would have done had it been the employer. Rather, the task of the Commission is to decide whether the legal right of the College to dismiss Mr Magyar has been exercised so harshly or oppressively towards him as to amount to an abuse of that right (re *Undercliffe Nursing Home* (1985) 65 WAIG 385). In doing so, the Commission will take into account all of the evidence that is raised before it during the course of the proceedings. The Commission does not take into account only the manner in which the College went about its decision making process on the material it had before it. The Commission will, depending on the evidence before it, take into account circumstances which were not necessarily considered by the College. This was recognised by Mr Magyar in that he called evidence from two teachers with an expertise in computing who teach at other schools. He also adduced evidence from other teachers at the College who had not played a direct role in the summative appraisal. In approaching this task it is as well to observe that the question of whether Mr Magyar's dismissal was, indeed, unfair does not depend only upon whether certain procedures or award provisions were rigidly observed or not. Whether Mr Magyar's dismissal was unfair will depend upon a consideration of the circumstances as a whole, in which the College's own procedures and the relevant provisions of the award form only a part.

I have found it convenient to deal with the issues as follows.

Mr Magyar argues firstly that the manner in which some aspects of the summative appraisal process were carried out breached policy guidelines issued by the Catholic Education Commission of Western Australia and entitled "Termination of Services of Staff Members—Incompetency or Misconduct" (exhibit 1 (68)). The issue is to be seen this way. The policy consists of a number of steps. The wording is not entirely clear to me but in my respectful observation the steps under the heading "Procedures" commence with the requirement for the Principal to inform persons that a significant problem exists and that it is proposed to undertake a formal appraisal process and steps 2 to 8 seem to be steps that are to be taken prior to that point being reached. Step 9 then deals with the decision that is made to proceed with a formal summative appraisal process which may lead to dismissal. Steps 10 onwards then deal with issues that occur after that process has commenced. In my view, there is little point in considering whether or not steps 1 to 8 have been complied with prior to the decision of the Principal to have a formal summative appraisal. The issue before the Commission is the dismissal of Mr Magyar, and the fairness of the dismissal will be assessed by more that just scrutinising the process prior to the formal summative appraisal being commenced. If the outcome of the summative appraisal revealed a problem or problems which were relied upon to justify Mr Magyar's dismissal and the problems are valid and justify the dismissal then there is only a limited value in scrutinising whether the Catholic Education Commission policy document was rigidly followed prior to the commencement of the appraisal. It was the case, as Mrs Parker conceded in her evidence, that part of the policy was not followed in that one or perhaps two of his memos to her were not answered. However, there were other times when memos were answered and there were discussions between Mr Magyar and Mrs Parker which satisfy me that some unanswered memos did not mean that Mr Magyar was thereby denied natural justice overall. Similarly, once the decision had been taken to dismiss Mr Magyar, he was not given the option of resigning as indicated in the policy. However, if that is a significant issue then the remedy is not to declare the dismissal invalid but to require that he be given that option.

That is not to say that the policy is irrelevant. Following the policy should ensure that the procedure is fair. But a failure to follow the policy does not mean that the procedure is thereby rendered unfair. It will depend upon the circumstances. The question to be asked is whether the dismissal was fair or unfair. For those reasons, failure to adhere to the policy overall is not itself decisive. Further, it is agreed that the parties are bound by Appendix 1 of the *Independent Schools' Teachers' Award 1976* which itself provides a procedure to be followed in relation to a summative appraisal. By virtue of the award, the Appendix will override the procedure to the extent of any inconsistency. I have not found anything in Mr Magyar's first argument, therefore, that could assist me in deciding that his dismissal was unfair.

Mr Magyar's second argument embraces whether the award had been followed in Appendix 1. It should be said at once that, even if Appendix 1 has not been completely followed, that of itself does not inevitably lead to the finding that Mr Magyar's dismissal was unfair. Depending on the nature of the breach, the breach may contribute significantly to such a finding, but then again it may not. In this case, the alleged breach concerns clause (2)(b)(iii) which is in the following form:

> During the process, the teacher shall be kept informed of the progress of the appraisal and shall be allowed to nominate any teacher to contribute to the appraisal on his or her behalf.

The facts of this matter are that, in a discussion with Mrs Parker, Mr Magyar initially mentioned the name of a teacher employed at the College to be his nominee but that he subsequently changed his mind and formally nominated, in order of preference, three teachers employed at three other schools. Mrs Parker was of the opinion, after seeking advice, that in the circumstances, the nominated teacher should be a teacher employed by the College, and not an external teacher. Mr Magyar sought advice from his union which, apparently, advised him that he was able to nominate a teacher from outside the College and the union confirmed this to Mrs Parker in writing. The interpretation of the clause remained unresolved between them and, in the event, Mrs Parker herself appointed the teacher employed at the College who was Mr Magyar's initial preference. The effect of this is that Mr Magyar did not have a teacher nominated by him to contribute to the appraisal on his behalf.

With hindsight, it is clear that either the union or the College ought to have sought the assistance of the Commission to determine that issue. It formed a significant part of the arguments on both sides and if the issue had been resolved at the commencement of the process this would not have occurred. With respect to all concerned, it is quite clear that the wording used in the clause does not restrict the nominee to the same school. I note that this is a clause which was inserted into the award by the agreement of the parties in 1990 (71 WAIG 334). On that occasion it was part of a larger series of amendments to the award and it did not attract any separate attention by the parties or the Commission in Court Session at the time. Any intention of the parties is therefore not contained in the wording used by them nor placed by them on the record of the proceedings. Although I must now deal with the wording in the course of assessing Mr Magyar's claim, it is important that the parties to the award themselves meet and decide whether they are able to agree on the manner in which the clause is to be clarified. It will be wrong to leave the clause in its current form for an argument to arise on future occasions.

The clause contains no restriction on the teacher who can be nominated. That having been said it must also be apparent that, as Mr Magyar indeed concedes, there must be some restriction on the teacher who can be nominated if it is to be a teacher from outside the school. The restrictions will include whether the teacher is in Perth, whether the teacher is willing to accept the nomination and whether the teacher's employer will permit the teacher to be released from the teacher's duties in order to participate. In my view, there may well be an advantage in allowing a teacher the subject of a summative appraisal to have as his or her nominee a teacher from outside the school. Depending upon the issues to be canvassed during the summative appraisal, there is an advantage to be gained in the perception that the nominated teacher is not employed by the school which is initiating the summative appraisal. It should also be the case that there should be no appearance of the Principal who initiates the appraisal process exercising a veto over the nomination, as was alleged by the union at the time (letter 21/5/96, exhibit 1(34)). I add that the allegation was not pursued, nor shown to be true, in the proceedings before the Commission.

Given the wording in the clause I conclude on this point that the College ought to have been receptive to Mr Magyar nominating a teacher or teachers from outside the College.

That is not to say that each of the three nominated teachers would have been released by their school to allow them to participate in the appraisal. There is evidence that, ultimately, Wesley College would not have released the teacher nominated by Mr Magyar, but there is no evidence in relation to whether the other two nominated teachers would ultimately have been released. I note Mr Magyar's memorandum at exhibit 1(31) but note also that if a formal approach had been made it is possible that all three may not ultimately have been released, in which case Mr Magyar's nominee would be from within the College and the three teachers who would have conducted the summative appraisal would all have come from within the College as indeed occurred.

The question arises as to the consequence of Mr Magyar's nominee not being on the summative appraisal upon the decision taken to dismiss Mr Magyar. In reaching a conclusion on this point I have the advantage of seeing the issue overall as a result of four days of hearing. The three broad reasons for the dismissal were referred to earlier. As to the SECONDARY EDUCATION AUTHORITY moderation and Mrs Parker's own conclusions, there is no evidence, nor any suggestion, that the inclusion of Mr Magyar's nominee on the summative appraisal would have produced a different result. In relation to the summative appraisal process the Commission has had the advantage of hearing the evidence of Mr Magyar's primary nominee, Mr Jager from Wesley College. He spoke most favourably of Mr Magyar's lesson materials. He also spoke of his school's policy regarding computer games and the difficulties of policing the issue. However, it is apparent from the evidence before the Commission that the issue of students playing computer games did not play a significant part in the decision to dismiss; Mrs Parker stated as much and I accept her evidence in that regard. Mr Jager gave evidence of his assessment of the consequences upon a teacher of student/computer ratios and computer downtime, and I generally accept his evidence. However, his evidence is overshadowed by the evidence from Mrs Parker herself and the evidence of the teachers called by the College who spoke of their direct knowledge and experience of Mr Magyar at the College. The adverse outcomes of the summative appraisal concerned as referred to in Mrs Parker's letter of the 16th October 1996 were failure to follow instructions given by the Principal and curriculum co-ordinator; inadequate assessment documentation; and failing to follow agreed programme and course outlines. Mr Jager's evidence does not go to those issues, which are specific to Mr Magyar and the College. The evidence as a whole does not compel the conclusion that Mr Jager's inclusion as an appraiser would have produced a significantly different result. The last two of the adverse outcomes are supported by the evidence before the Commission of Mr Hailes, Mrs Gould and Dr Partis. All three are supported by the evidence of Mrs Parker. In conclusion therefore the failure of the College to include Mr Magyar's nominee can not be seen to have materially affected the outcome of the summative appraisal and the summative appraisal was only one of three reasons for the dismissal. Therefore, although I find Mr Magyar's argument on this point made out, it is not determinative of his claim to have been unfairly dismissed.

The third argument submitted by Mr Magyar in support of his claim is that there was no valid, or good reason to justify his dismissal. I therefore turn to examine the evidence before the Commission. The greater part of the College's evidence was given by the Principal at the time, Mrs Parker. She has been in the education industry for 26 years and was the Principal of the College for the 7 years until the end of 1996. Her evidence was clear and consistent and not broken down in cross-examination. I have no hesitation in accepting her evidence. She gave evidence that she had never required a summative appraisal to be undertaken against a teacher in circumstances such as these. She had found that when she tried to raise issues with Mr Magyar he deflected criticism and did not accept it. She had complaints made against Mr Magyar by some other teachers. She had tried to be specific with him regarding issues such as punctuality, leaving the class unattended and work programmes not being up to date. She grew concerned about the latter issue especially and became aware that as time progressed, Mr Magyar's documentation was still not in place. Mrs Parker felt that the summative appraisal's outcome was sufficiently worrying to warrant a moderation by the Secondary Education Authority of the Year 12 Applied Computing class and this was done. The outcome of the moderation confirmed her worst fears and she decided that Mr Magyar would be dismissed.

The evidence before the Commission undoubtedly confirms the issues relied upon by Mrs Parker. The summative appraisal itself was conducted by three appraisers: Mrs Johnson, Mr Hailes and Mr Palmer. Two appraisals were performed between June and September 1996. Mr Hailes and Mr Palmer both gave evidence before the Commission. I note here that I refused an application by the College during the course of the presentation of its case to accept an affidavit from Mrs Johnson who was unable, due to illness, to give evidence. I refused leave because of the objection of Mr Magyar and that Mr Magyar had been strongly critical of the reports written by Mrs Johnson. Her evidence would therefore be controversial and the fact that she was unavailable for cross-examination would mean, given the oral evidence before the Commission, that any affidavit evidence could be accorded little, if any, weight.

As to the summative appraisal outcome I find the evidence of Mr Hailes to be quite compelling. Mr Hailes' first report was seen by Mr Magyar as "fair and accurate, at least for the first part". However, he does not accept Mr Hailes' second report, which is adverse to him. The only reason I can see why Mr Magyar viewed the second report as not "fair and accurate" is because it is adverse to him. That is not a valid basis for criticism and yet there is no other basis for Mr Magyar's view. Mr Hailes' evidence before the Commission was clear and not broken down. Mr Hailes has been teaching for 22 years and has been at the College for 6 years. I cannot accept Mr Magyar's criticism of Mr Hailes' second report merely because it goes against Mr Magyar. On the evidence I accept Mr Hailes' report which finds that Mr Magyar is unable to recognise the essential elements of an effective team, that he has a lack of ownership for the role he has played in detracting from staff harmony and finds untenable Mr Magyar's reluctance to implement professional and personal advice. Mr Hailes' conclusion is that Mr Magyar's modus operandi in the area of staff co-operation and collaboration has no place in a secondary school. I accept his evidence that Mr Magyar's routine of communicating by notes and memoranda to be a difficulty. This was supported by the evidence of Mrs Lainio. I accept that she found Mr Magyar's approach to issues raised by her as being one of criticism and complaint and his recourse to memoranda rather than discussing issues first was unprofessional. I accept her understanding that issues raised by her with him would be misinterpreted. Even if, as Mr Magyar would have it, the Commission discounts the reports from Mrs Johnson, it is clear from the reports of Mr Hailes that Mr Magyar's documentation was not up to standard: exhibit 1(38) third document, report of Mr Hailes. This was amply borne out by the SECONDARY EDUCATION AUTHORITY moderation. The conclusion of the moderation on 30th October 1996 was that in relation to the year 12 Applied Computing Course (taught by Mr Magyar), the course content had not been covered and assessed, the assessment had been at an inappropriate standard for year 12, the assessment records produced did not conform to the Secondary Education Authority's Assessment Structures for the course and that the actual data in the assessment records was often wrong (exhibit 1(60)).

I find Mr Hailes' evidence to be most apt when he stated that Mr Magyar is an experienced teacher with approximately ten years' service and should not have to be treated like a first year teacher or a teacher on practical experience so that every little detail needed to be set out in writing for him. I accept unhesitatingly his assessment that Mr Magyar's documentation, including the work book, was grossly inadequate and yet it is a part and parcel of every teacher's life year in and year out. In my view there was sufficient in the outcomes of the summative appraisals for an experienced teacher such as Mr Magyar to have made a major effort to remedy the defects. This just did not occur, and rather, Mr Magyar tended to be critical of others in his responses. It is the case that the evidence before the Commission from the summative appraisal, and as reinforced by Mr Hailes' evidence, is amply borne out by the moderation report of the Secondary Education Authority. The evidence does show that there was a valid reason connected with Mr Magyar's capacity, as well a valid reason based

on the operational requirements of the College, for the dismissal.

Mr Magyar does not accept these criticisms but he has not been able to demonstrate before the Commission that his criticisms are valid. As to the summative appraisal I am satisfied that, overall, there was no denial of natural justice to Mr Magyar: he was informed of the intention of the College to have a summative appraisal; he was informed of the commencement of the process; he was given copies of the reports of the appraisers; he was given the opportunity to have his union present or to contact them. Mr Magyar may disagree with the union, but the point is that he was given the opportunity to involve the union and indeed did so. He was given an opportunity to comment not just to the appraisers but to Mrs Parker on the outcomes of the appraisal processes prior to the decision being made. That he chose to respond to Mrs Parker only does not detract from the opportunity given to him to comment directly to the appraisers. It is not the case that Mr Magyar was denied natural justice because his comments were not accepted. This conclusion cannot be successfully challenged by Mr Magyar attempting to criticise some of Mrs Parker's correspondence. For example, a most serious outcome of the summative appraisal concerns Mr Magyar's inadequate assessment documentation and his failure to follow the agreed programme and course outlines. This was formally noted by the Principal to Mr Magyar in her letter of the 16th October 1996 (exhibit 1(58)) when she noted that the findings of the summative appraisals were adverse. I find it rather telling that Mr Magyar attacked this letter as failing to indicate why the Principal thought the outcomes of the formal summative appraisal were adverse. In my view his criticism cannot be made out. The letter of the 16th October 1996 itself refers finally to three of the "major issues" quite clearly in the context of the discussions which had occurred between Mr Magyar and Mrs Parker and particularly between Mr Magyar and Mr Hailes. In my view the criticism directed by Mr Magyar against this letter is an example of the manner in which his criticism is directed to his dismissal overall. He is quicker to criticise the wording of the letter than he is to acknowledge the deficiencies in his documentation. However, those deficiencies were recorded in the reports of the summative appraisal process and are fact.

Mr Magyar does concede that there were problems with his teaching of the year 12 Applied Computing class in 1996. Mr Magyar himself admits this, although he states that he believes it is unfair that he be seen as "a scapegoat" by having attributed to him all of the blame. He would see his liability in this regard as being around 25%. Mr Magyar has submitted that his failure to achieve the required standards in year 12 computing in 1996 were due to structural reasons: for example computer downtime of "five to six weeks", the deletion of the LOGO programme for a period during the middle of the year, delays by contract technicians in repairing individual computers which were not working. I have considered Mr Magyar's evidence in relation to this but on the evidence overall he has not been able to demonstrate that the events he refers to inevitably lead to the conclusion that he was not at fault. To be sure, the evidence of Mr Jager and of Mr Matthews, both with considerable computer teaching experience in other schools, might support Mr Magyar's defence in this regard. However their evidence is effectively countered by the evidence of Mrs Gould and to an extent by the other teachers at the College who also taught computing part time with Mr Magyar. The teaching of the other computing teachers from the College, albeit part time, does not show any effect from these "structural problems" as Mr Magyar's teaching did. Both Mr Dowsett and Mrs Lainio completed their course objectives notwithstanding that there was some computer downtime. If indeed 1996 had been as bad a year for the College as Mr Magyar would have the Commission believe, then there is no evidence that that bad year manifested itself in any other computing area of the College. In this regard, I regard as more accurate the evidence of Mrs Parker that there were difficulties in 1996 but no major reasons why the year 12 Applied Computing course could not have been covered. I do not see this as a conclusion in itself, but merely an indication that the evidence of Mr Magyar is not to be preferred where it conflicts with the evidence given by others who were at the College at the time, including Mrs Parker. The evidence of both Mr Jager and Mr Matthews does not go to Mr Magyar's performance at the College. Whilst I am prepared to accept their evidence and assessment of Mr Magyar as most knowledgeable in computers, their evidence does not go to this issue. The evidence of Mr Palmer and two other teachers at the College called by Mr Magyar does not overcome the specific evidence of the summative appraisal process and the moderation report. I am therefore left with the conclusion that Mr Magyar's perception of his lack of fault in the findings of the summative appraisal process and the moderation report may be genuinely held by him but his perception is not accurate.

Mr Magyar attacked the outcome of the moderation by attacking the impartiality of the moderator, Mrs Gould. However, the allegation was not pursued when Mrs Gould gave evidence, and with respect it could not have successfully been pursued. It can be categorically stated that any allegation of bias is totally unjustified. Indeed the only basis put forward by Mr Magyar for such an allegation is that Ms Gould had been a moderator for one of Mr Magyar's courses in 1991. Indeed she had been, but the mere fact that a moderator has conducted a previous moderation on an earlier occasion does not, of itself, lead to a suggestion of bias. In any event, the evidence is that her report on that occasion was supported by a report from another moderator at the time. It is quite telling, in my view, that Mr Magyar sought to deal with the issue by attacking the moderator rather than the moderator's findings of fact. I note that prior to the moderation commencing Mr Magyar wrote to the Principal welcoming the visit and stating that "I strongly suspect that in broad terms the moderation visit will confirm that I have conducted year 12 Applied Computing in accordance with Secondary Education Authority guidelines" (exhibit 1(53)). Given that the visit in fact found precisely to the contrary leads me to suspect that Mr Magyar was simply unable to assess his own position objectively.

I have given consideration to all of the evidence and in particular to the evidence in support of Mr Magyar given by the witnesses brought to the Commission on his behalf. However that evidence cannot outweigh the reasons advanced by the College for its decision to terminate Mr Magyar. In my view Mr Magyar has not been able to show that his dismissal was unfair. Indeed, on the evidence that was produced before the Commission in these proceedings, in my view the College was obliged to take the steps that it did in initiating the summative appraisal and the moderation. Those reports together with the conclusions reached by Mrs Parker left the College with little alternative other than to take the action that it did in dismissing Mr Magyar. Mr Magyar is a professional teacher from whom professional standards are to be expected. The evidence, particularly of the Secondary Education Authority moderation and from Mr Hailes, together with the evidence of Mrs Parker, shows that Mr Magyar's standard of teaching and his interaction with other staff members at the College fell short of that standard. Mrs Parker acted most properly. She gave great consideration to the decision to dismiss. She considered Mr Magyar's personal circumstances and took them into account. She sought to preserve his reputation. She even contacted him subsequent to the dismissal to inform him that counselling would be made available to him if he wished. The procedure followed by the College in reaching the decision it did to dismiss Mr Magyar was not unfair to him.

The application will therefore be dismissed.

Appearances: Mr D. Higham on behalf of the applicant.

Mr P. Andrew on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie George Magyar

and

Ursula Frayne Catholic College (Inc).

No. 1746 of 1996.

COMMISSIONER A.R. BEECH.

7 March 1997.

Order.

HAVING heard Mr D. Higham on behalf of the applicant and Mr P. Andrew 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.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Anthony Smith

and

Rockingham Bowling Club Inc.

No. 1353 of 1996.

COMMISSIONER R.N. GEORGE.

6 February 1997.

Reasons for Decision.

THE COMMISSIONER: The facts in this matter are largely uncontroversial and may be summarised as follows.

The Applicant, Mr Paul Anthony Smith (hereinafter referred to as the Applicant), commenced employment as a Greenkeeper with the Rockingham Bowling Club Inc., (hereinafter referred to as the Respondent) on or about 11 December 1989. It is common ground that the Applicant is an employee of the Respondent and that the Golf Link and Bowling Green Employees Award, 1993 as amended and consolidated, applies. The Applicant's duties include the maintenance of two grass and two synthetic bowling greens, the maintenance of club surrounds, the maintenance of machinery, and the ordering of supplies required to perform his work. In 1992 the Applicant was asked to perform additional work associated with the preparation of greens for championship competition in return for an increase in his rate of pay of $35.00 per week.

In December 1995 the apprentice Greenkeeper completed his indenture with the Respondent and resigned to take up work as a Greenkeeper with another bowling club. A decision was made at that time not to take on a new apprentice and the then Treasurer, Mr A. Marsh, a witness in these proceedings, was asked by the President and Secretary of the Respondent to look at alternatives. Following discussions between Mr Marsh and the Applicant, a proposition was put that the Applicant take on the additional workload resulting from the loss of the apprentice and that he be paid an additional $95.00 per week in return. It was also proposed that $45.00 per week be paid to a member, Mr Fordham, to assist the Applicant in his work. This was seen to be of significant benefit to the Respondent as it resulted in savings in wages of approximately $12,000 per annum, although the Secretary at the time was not sure that it was the best option.

The proposal discussed between Mr Marsh and the Applicant was put before the Management Committee of the Respondent and was dealt with at Management Committee meetings on a number of occasions (see Exhibits A1, A3, A4 and A5). Until the Management Committee meeting of 16 April 1996 (Exhibit A4) there is no indication of any formal acceptance of the proposal presented following the discussions between Mr Marsh and the Applicant. It was Mr Marsh's undisputed evidence, however, that despite there being no record of formal approval there was general acceptance of the arrangement from the time the matter first went before the Management Committee on 13 February 1996 (See Exhibit A1) and the Applicant was in fact paid at the new rate of $754.70 with effect from mid February 1996. That rate included $95.00 per week for work associated with the preparation of greens for championship competition and the further $95.00 per week for additional workload resulting from the decision not to replace the apprentice. The latter payment was referred to as the "no assistant bonus" (See Exhibit A2).

The February 1996 minutes of the Management Committee meeting (Exhibit A1) record the arrangement discussed between Mr Marsh and the Applicant but no resolution as to its acceptance or otherwise.

The March 1996 minutes of the Management Committee meeting (Exhibit A3) note the tabling by Mr Marsh of a proposed Contract of Employment negotiated with the Applicant. The minutes also record that the proposed Contract of Employment had been amended by the Management Committee and returned for further consultation with the Applicant.

The April 1996 minutes of the Management Committee meeting record that a second draft of the Contract of Employment submitted to the Management Committee had been proposed, seconded and passed with two amendments for retyping and presentation to the Applicant the following day for his remarks. The document as approved by the Management Committee made the following provision in relation to salary.

"SALARY

It is agreed that the Greenkeeper's Salary shall comprise—

AWARD	$397.70
OVER-AWARD	167.00
PREPARATIONS FOR CHAMPIONSHIPS	95.00
NO-ASSISTANT BONUS	95.00
TOTAL	$754.70

Any increase in the weekly Award Rate will be immediately passed on at the Commencing Dates determined by the Industrial Commission. This Agreement shall be subject to a Review on July st. (sic) 1996, by The Committee. The Review shall determine the Greenkeeper's ability to maintain the Greens in good condition without the aid of an Assistant. If, at any stage, the Management Committee is of the opinion the greens are not being maintained to a good standard, the Management Committee may review the situation, and, if an Assistant is required, the Greenkeeper's Salary would be adjusted accordingly, in respect of the "NO assistant" Bonus.

A Salary Review will take place on 31st January 1997, and each TWELVE (12) Calendar Months thereafter and, unles (sic) the Parties agree otherwise, the Annual Salary will, on and from the Date of Review, be the Salary applicable immediately to (sic) the Review, plus a percentage of the Annual Salary equal to the per centage rise of the Consumer Price Index in the period since the commencement of the Contract, or last Review date, whichever is the latest."

[Exhibit A2]

This clause had not been the subject of any amendment by the Management Committee at its April 1996 meeting and reflects the rate of pay received by the Applicant from mid February 1996. The revised Contract of Employment was rejected by the Applicant, however, because the amendments which had been proposed and passed by the Management Committee, the terms of which are not incorporated in the document submitted to the Commission as Exhibit A2 and are irrelevant to these proceedings, were unacceptable to him.

The 14 May 1996 minutes of the Management Committee (Exhibit A5) record that the then Treasurer had raised the question of the Applicant's Contract of Employment and sought to have the matter finalised. The minutes also record that doubts had been raised as to the legality of what the Management Committee had been trying to accomplish and a sub-committee was established to deal with the issue.

The sub-committee met with the Applicant on 22 May 1996 and the outcome of that meeting was recorded in a "resume" for the Committee of Management in the following terms.

"For the Committee of Management Only

RESUME of Meeting held between the President, the Treasurer and myself and Paul Smith at 9.30am on Wednesday 22nd May 1996.

1. We explained to Paul that the new Committee of Management at its first meeting in May decided that his November 1995 request for a review of his "work contract" be dealt with as a matter of priority and that this sub committee had been established for that purpose.
2. Paul was informed that having studied the matter, the sub committee requested a special meeting of the Committee of Management and having reported to it last evening was authorised to convene today's meeting.
3. We then advised Paul that because of the change of circumstances over the years of his employment, ie, the reduction in the number of grass greens, no longer an apprentice to train and supervise, a 25% reduction in membership and a decline in income and a rise in expenditure—did not justify any increase in his rate of wage or improvement to his conditions of employment or a fixed term of employment.
4. Paul replied that he sought none of those things and that his request for "a review of his work contract" meant a more explicit and detailed version of "his duties and responsibilities" as set out in his contract of Employment—("The Union's Agreement") of 1992 and which document he accepted as his Contract with the Club.
5. We apologised to Paul for our lack of knowledge of what had transpired since November 1995 between him and previous office bearers and our misunderstanding of his request.
6. We undertook to acquaint the Committee of Management of the "truth of the matter" at its next meeting and seek its authority to meet again with him upon his return from Annual Leave to discuss a more explicit statement of his duties and the responsibilities of both parties in the discharge of those duties in practical terms.

In Conclusion:

(a) Paul was reminded that the "Assistance" allowance now paid to him would be reviewed in July and could be abolished.

(b) It was agreed that the allowance will not be paid whilst on Annual Leave.

(c) It was agreed that in future the terms of his employment will not be a matter of public knowledge or publication and decisions of the Club affecting him in any way will be conveyed to him only by the President or his Nominee.

Paul thanked us for our frankness and voiced his appreciation of the manner in which we had handled the matter and expressed the hope that in the future, now that the air had been cleared, he would not be the subject of uninformed comment by general members of the club.

The meeting concluded at 10.05am.

Geoff Martin

22/5/1996"

[Exhibit A6]

The content of the resume is not disputed by the Applicant except in respect of conclusion (a). According to the Applicant the review identified in conclusion (a) to take place in July was understood by him to be intended to be in accordance with the arrangement set out in the salary clause of the proposed contract of employment (see extract from Exhibit A2 recorded above), albeit that the contract had not then and still has not been agreed between the parties.

In the course of the meeting of 22 May 1996, the Applicant was also informed by the sub-committee that the "no assistant bonus" of $95.00 per week would not be paid during his annual leave which was to commence the following month, as that money would be needed to help pay for a replacement in his absence. This arrangement was agreed to by the Applicant.

Subsequent to the meeting between the Applicant and the sub-committee, it was resolved by the Management Committee in its June 1996 meeting to reduce the Applicant's salary to $600.00 per week with effect from the first payment in July 1996 (Exhibit A7). There had been no discussion with the Applicant in relation to this matter and he first became aware of what was proposed when told by the President and Treasurer on 12 June 1996 that his pay was to be reduced to $600.00 per week on his return from holidays. (Transcript p.35). Under cross-examination the Applicant agreed when it was put to him that he was told his pay was to be reduced by $130 per week. This would result in a new weekly pay rate of $624.70 as opposed to $600. I am of the view, however, that the correct position is that first described by the Applicant in examination in chief, that is that his pay was to be reduced to $600.00 per week. It would appear that his acceptance under cross-examination of the figure of $130 per week was as a result of some confusion on his part. The Applicant proceeded on his annual leave between the dates of 20 June 1996 and 22 or 23 July 1996 and on his return to work on 23 or 24 July he was asked to attend a meeting with members of the Management Committee where he was informed that his pay was to be reduced by $130.00 per week to $624.70 per week with effect from the pay period ending 7 August 1996. According to the Applicant, whose evidence in this regard I accept, this was the first time he had been told the date from which the new rate of pay would be given effect and the figure of $600.00 per week was not mentioned to him in the course of that meeting. Pay slips submitted as Exhibit A8 confirm that the Applicant was paid $754.70 for the week ending 31 July 1996 and $624.70 for the week ending 7 August 1996, the latter rate being the rate he has continued to receive since that date. It is the evidence of the Applicant that on being given notice of the reduction in pay from $754.70 to $624.70, he voiced his objection to the President of the Club and he has at no time agreed to the reduction in pay.

The Applicant now claims through his agent, Mr Higham, that the proposed Contract of Employment rejected by the Applicant provides a record of the intent of the Respondent and that the claim should be determined by an order firstly that the Applicant's rate of pay be restored to $754.70 per week with effect from the week ending 7 August 1996 and secondly, that there be no further reduction in pay in accordance with the Management Committee resolution of 11 June 1996 (Exhibit A7).

Mr Williams on behalf of the Respondent called no evidence and submitted that the issue to be resolved was simply whether the Applicant had been denied a benefit under his Contract of Employment. In this respect it was submitted that the Contract of Employment referred to by the Applicant (Exhibit A2) had never been agreed between the parties and had no status. It was not disputed that the $754.70 per week received by the Applicant from mid February 1996 was in accordance with his Contract of Employment at the time. This changed, it was submitted, with notice given to the Applicant on 12 June 1996 that his rate of pay was to be reduced on his return from holidays which were due to commence on or about 20 June 1996. Given that the Applicant's pay was not reduced until the week ending 7 August 1996 this represents, in Mr William's submission, six weeks notice, well in excess of the two weeks required under Clause 9.—Contract of Service, of the Golf Link and Bowling Green Employees Award, 1993. Once notice of the reduction in pay was given, it was submitted, the Applicant had two choices. He could either accept the variation to his contract or reject it and leave his employment. Mr Williams provided the Commission with three authorities in support of this contention (The Australian Workers' Union, West Australian Branch, Industrial Union of Workers vs BHP Steel 72 WAIG p.2863; Abdullah Habib vs metro Meat Ltd (Albany Division) 66 WAIG p.80; and Michael Gerard Swain vs Sumreal Nominees Pty Ltd 71 WAIG p.240).

It seems to me that on the facts as I have found them to be that the matter before the Commission involves the unilateral variation by the Respondent of the Applicant's terms of employment.

It is the case that at law the employer cannot unilaterally change the terms of an employee's contract to the employee's

disadvantage as such conduct would constitute a breach of contract. The employer can, however, seek to alter the contract by bringing it to an end with lawful notice and by offering a new contract in its place which the employee can accept or reject. The Respondent submits that this was done by the giving of six weeks notice on 12 June 1996. The Applicant gave evidence that is accepted by the Commission that he was told no more on 12 June 1996 than that his pay was to be reduced to $600 per week on his return from holidays. On his return on 23 or 24 July 1996 he was told that his pay was to be reduced to $624.70 with effect from the week ending 7 August 1996.

The issue of unilateral variation of terms of employment by an employer was examined by the Industrial Appeal Court in Belo Fisheries v Froggett (1983) 63 WAIG 2394. In that matter the Commission at first instance found as a matter of fact that the Respondent had agreed to employ the Applicant as a Ship's Engineer for a period of 12 months at a salary of $20,000 per annum with the right in the Applicant to terminate the contract after six months. The Respondent had argued that remuneration was to be based on a different arrangement set out in a note given to the Applicant while at sea which linked his remuneration to the size of the catch or alternatively to a minimum payment of $18,000 if the employee remained in employment with the Respondent for a minimum period of 12 months. The Commission at first instance also found that "...he (the Applicant) did not at any time agree to an alteration of those conditions in the way suggested by the written note given him by Mr Belo in October of 1981. He said that he told Mr Belo that he did not accept that note as accurately recording their agreement, and thus refused to sign it. The fact that he continued to work for the Respondent thereafter cannot, without more, in the circumstances be taken as an acquiescence of those terms. The Respondent cannot alter the original terms unilaterally, and there is no evidence that he terminated the original contract and offered a new one." (63 WAIG 577 at 578).

The Full Bench of the Commission on Appeal, having reviewed the evidence at first instance, found from the combination of all of the factors that the Applicant at first instance was aware of a change in the terms of his employment from the note given to him at sea in October 1981 and that it could be said that he had acquiesced to those changes at least from 19 December 1981. That was the date on which the Applicant returned to work with the Respondent following a short break when he left the boat on its return to Fremantle. His evidence of reliance on the terms of the note for obtaining continued payment in the form of advances was also a factor taken into account. In its conclusion the Full Bench said—

> "We think it is to be inferred from the foregoing combination of factors that the respondent was aware that the terms of the note would relate to his work and may be said to have acquiesced at least from the return of the boat to Fremantle which event appears to coincide with the respondent's reliance upon the note for advance payment.
>
> We have had regard to matters affecting the reality of his agreement to such terms and are of opinion that his reluctance under the circumstances is not sufficient to disturb the fact, as he acknowledged, that he did accept them.
>
> It is not the mere fact of his conduct in continuing work but as well the respondent's evidence that lead us to conclude that the terms of agreement as found by the Commission were altered. Although the note may be said substantially to contain the altered terms, the payment of monthly advances was plainly of vital interest to the respondent. Bearing that in mind we see no reason to uphold the appellant's claim that the agreement between the parties was, in law, an entire contract save as to the provision of advances."
>
> (63 WAIG 1394 at 1396)

In these circumstances the Appeal was upheld in part and the order at first instance varied to reflect the finding of the Full Bench that the Applicant at first instance had acquiesced to the changed terms of his contract from 19 December 1981.

The decision of the Full Bench was taken by the Respondent at first instance (the Applicant on Appeal to the Full Bench) to the Industrial Appeal Court which held that the appeal was incompetent as the matters referred to related to questions of fact and no question of law arose. In his judgement in that matter Kennedy J said "...There is no evidence of any agreement on the part of the respondent to the variation of the terms of his employment at the time when the note was handed over to him and it was never, of course open to the appellant unilaterally to amend the contract. The mere fact that the respondent continued to work is irrelevant, even if it had reasonably been open to him to abandon his employment on the boat when he refused to accept the terms set out in the note. He was, indeed, bound to continue to work under his existing contract unless he chose to accept the conduct of [the appellant] as constituting a repudiation of the contract. Any other conclusion would lead to the appellant's being able to force the respondent into agreeing to accept a lesser remuneration or for himself to terminate the contract." (63 WAIG 2394 at 2395).

To the extent that the authorities submitted by Mr Williams differ from those expressed in the Belo Fisheries Case I follow the latter.

In the present case the action taken by the Respondent was not to bring the Applicant's contract to an end and to offer him a new contract. What it did was seek to unilaterally alter one of the terms of the existing contract, that being the rate of pay to which the Applicant was entitled. The evidence of the Applicant, which is not contested, was that while he continued working for the Respondent he at no time agreed to the change in his rate of pay and in fact objected to it on more than one occasion. His ongoing objection to the change is also evidenced by the present application which he filed in the Commission on 27 September 1996. There is no indication in the evidence, in my view, of any acquiescence on the part of the Applicant and it was not submitted on behalf of the Respondent that such was the case.

Taking all of the material before the Commission into account I find that the actions of the Respondent did not bring to an end the Applicant's Contract of Employment or that he accepted a new contract or that the existing contract was varied by mutual consent or acquiescence. The Applicant is therefore entitled to the benefit claimed to have been denied to him, that being the amount of $130.00 per week by which his rate of pay was reduced with effect from the week ending 7 August 1996 and I would so order. As to the second order sought, it is not a matter raised in the Application as filed and I find no basis in law or on merit to support an order purporting to interfere with the June 1996 resolution of the Committee of Management or to prevent the future exercise by the Respondent of its lawful rights.

Appearances: Mr D. Higham appeared on behalf of the Applicant

Mr B. Williams appeared on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Anthony Smith

and

Rockingham Bowling Club Inc.

No. 1353 of 1996.

COMMISSIONER R.N. GEORGE.

11 February 1996.

Order.

HAVING heard Mr D. Higham on behalf of the Applicant and Mr B. Williams on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

> THAT the Respondent pay to the Applicant the benefit denied under his contract of employment being an amount of $130 gross per week with effect from the pay period ending 7 August 1996 to restore his gross rate of pay to $754.70 per week.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Christopher Winter

and

Federal Pty Ltd.

No. 1618 of 1996.

COMMISSIONER J F GREGOR.

21 February 1997.

Reasons for Decision.

THE COMMISSIONER: On the 8 of November 1996 John Christopher Winter (the Applicant) applied to the Commission for an order pursuant to Section 29 of the Industrial Relations Act 1979 (the Act) on the grounds that he had been denied outstanding benefits at the conclusion of a contract of employment with Federal Pty Ltd. At hearing which took place on the 21 January 1997 the Applicant told the Commission that he had been employed as general manager of Federal Pty Ltd of which Guy Owen Sherrington was the Director. The contract of employment commenced on the 11 March 1996 and finished on the 5 July 1996 in circumstances which are the subject of dispute between the parties.

In his evidence Mr Winter said that he had discussions with Mr Sherrington over his employment package and promises had been made to him. He said that the contract included a number of items such as a motor vehicle and a mobile phone which are not subject of the dispute before the Commission. Mr Winter said that the starting salary was $35,000 per annum. He told the Commission that he used his personal car and he understood he was able to claim for fuel costs. The Director's car was used and he paid for fuel. Receipts for the payments made were kept. Over the period of employment he expended money on behalf of the company from his own pocket. The details are set out in Exhibit W2. They include claims for expenditure on stationery, hardware, gas and pocket money given to a worker. It was admitted to the Commission that partial reimbursement of $800.00 had been received. This had been deducted from the amount due. A bundle of receipts were submitted (Exhibit W1) but Mr Winter did not address each of those receipts individually to inform the Commission which, if any of them, had been subject to the part-payment on 28 August 1996.

Concerning his dismissal the Applicant said that he had an acrimonious exchange with Mr Sherrington in early July 1996. He had raised issues with him concerning payments which he though were due, he decided that he would resign and told Mr Sherrington this. The Applicant alleges that Mr Sherrington told him that he could leave straight away. During cross examination by Mr Sherrington, the Applicant was questioned concerning his rate of pay. It was alleged that there had been an error made which resulted in the Applicant receiving an overpayment of $2,144.45. Mr Winter denied all knowledge of the overpayment insisting that his salary was based on the amount of $35,000 per annum. The hearing was adjourned to allow the parties to discuss the total sum of indebtedness on the claims for additional expenses. On resumption the respondent advised that the company calculated an amount of $313.57 as being outstanding to the Applicant.

Mr Guy Sherrington gave evidence on behalf of the respondent. He said that he approached John Winter in 1995 to work for Federal Pty Ltd, the salary was agreed at $35,000 per year. Mr Sherrington said due to a mistake there was an over payment amounting to $5,000 per annum. He said that on the day the Applicant left the company's employment he stated that he would like to leave before the end of the notice period. The Applicant said 'I'm going I'll leave on Friday', to which Mr Sherrington responded 'Why don't you leave now?'. Mr Winter left and did not return. During Examination-in-Chief by Mr Mackie, Mr Sherrington said that the matter of the over payment only recently came to the attention of the Respondent. Insofar as the loss of receipts that had been submitted by the Applicant were concerned Mr Sherrington said that the only reason that he could give if there were missing receipts, is that they may have been lost during a move of premises. In relation to alleged overpayment Mr Sherrington produced a letter from Tax Shield Accounting Services (see Exhibit S1) which he said provides evidence that $40,000 per year was incorrectly used as the base salary. Concerning the events surrounding the termination, Mr Sherrington's evidence was not dissimilar from that of the Applicant except that he admitted there might be room for doubt about the precise events and therefore Mr Winter may be owed two days pay.

Section 29 (1)(b)(ii) of the Act provides that a matter may be referred to the Commission by an employee in circumstances where the employee claims that he or she has not been allowed by his employer a benefit not being a benefit under an award or order of the Commission to which he is entitled under his contract of service. The Commission is therefore required to make an enquiry to ascertain the status of the contract to establish if the benefit claimed arises from the terms of an award or order of the Commission. In this case it is clear that the contract has no relationship to any award or order of the Commission and the test is met. Having so concluded the Commission now must discover the terms of the contract and apply the facts to those terms to ascertain whether there is an entitlement under the contract that remains unpaid.

It is clear from the evidence and particularly the concession from the respondent that there was a contract of employment between the two parties. The contract of employment provided that if the Applicant made expenditure from his own personal funds on behalf of the company then it would be reimbursed. The difficulty arising in this case is that in having decided that such a contract entitlement exists to determine what is the amount of money, if any, outstanding at the time the contract was bought to an end. Exhibit W2 sets out the claim but there is a concession that $800.00 of that claim, which consists of a mixture of money said to be owing from both termination pay and personal expenses, has been paid. The Respondent submitted a book of receipts during the hearing but no attempt was made to identify whether any of those related to the money that had been claimed or if indeed they were legitimate amounts which ought to be paid. The Commission though is helped in determining this matter by the concession made on behalf of the respondent that a sum of $313.57 was owing. In the face of the Applicant not being able to prove his claim with particularity, in the absence of the concession from the employer it would have been difficult for the Commission to make a finding on the information put before it. In the circumstances I have decided that I will accept the conceded amount as being the amount bona fide due under the contract of employment and an Order will issue for payment of $313.57.

Insofar as the claim for a weeks pay in lieu of notice is concerned it is clear that it can be implied into the contract of service that there was an arrangement for notice to be given on termination. As I have indicated in the recitation of the evidence there is not much difference between what was said by both the Applicant and Mr Sherrington in the conversation which lead to the completion of the contract of employment. It is clear that Mr Sherrington told the applicant that he could leave on the spot, it is also clear that in his mind that may have been taken by the Applicant that he should leave two days later on the Friday. Insofar as the Applicant's recollection is concerned he was clear that he was prepared to leave forthwith if there was consent. As far as he is concerned consent was given. On the balance of probabilities and in view of the concession by Mr Sherrington I think it is more likely than not that the story of the Applicant is more the accurate and is the preferred version. Even if there was consent between the parties to bring the contract to a close immediately there was no consent that a weeks pay in lieu of notice be waivered. Calculated on a base salary of $35,000 the Applicant should receive a weeks pay in lieu for termination, a sum of $570.00.

During cross examination of the Applicant the respondent raised the allegation that he had been overpaid. No application was made to the Commission for an offset of any alleged overpayment. The Commission was given in Exhibit S1 a copy of a letter from the accountant of the Applicant, Tax Shield Accounting Services. This letter is said to prove that the Applicant was overpaid. I have examined the letter carefully and I cannot see that it gives any weight at all to the suggestion that there has been an overpayment. It notes that the Applicant had phoned the accountant and asked for a letter to say that his annual salary was $40,000 but the response from the accountant was that the Applicant had been employed on an annual salary of $35,000. This is the salary which the Appli-

cant says during the proceedings before the Commission that he was to be paid. The letter gives no support to the proposition that there has been an overpayment. Even though the matter had not been raised as a counter claim the Commission, in applying the tests in Section 26 of the Act, would have taken that matter into account as a question of equity. However on the information before me I can make no finding that there has been an overpayment.

Orders will issue which will require that the Respondents shall pay to the Applicant $313.57 for expenses not paid and $570.00 being a weeks pay in lieu of notice, the total being $883.57.

Appearances: Mr J C Winter appeared on his own behalf.

Mr G Sherrington and with him Mr B Mackie appeared on behalf of Federal Pty Ltd.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Christopher Winter

and

Federal Pty Ltd.

No. 1618 of 1996.

COMMISSIONER J F GREGOR.

21 February 1997.

Order.

HAVING heard Mr John Christopher Winter on his own behalf and Mr Guy Sherrington and with him Mr B Mackie on behalf of the Respondent, pursuant to the powers contained in the Industrial Relations Act, 1979, the Commission does hereby order:

THAT Federal Pty Ltd shall pay to John Christopher Winter the sum of $883.57.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

CONFERENCES—
Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia Western Australian Branch and Others

and

Metro Brick.

No. C 387 of 1996.

COMMISSIONER P E SCOTT.

17 February 1997.

Recommendation.

WHEREAS on the 10th day of December 1996 the Federated Brick, Tile and Pottery Industrial Union of Australia Western Australian Branch filed with the Commission an application for conference to deal with the issue of a lack of discussion between the parties as to the renewal or otherwise of the Metro Brick Armadale (Enterprise Bargaining) Agreement 1994 No AG 96 of 1995; and

WHEREAS the Commission has convened conferences between the parties on the 6th and 13th days of January and 17th day of February 1997; and

WHEREAS the Commission has ordered the joinder as parties to this matter of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch; and

WHEREAS the Commission is of the opinion that it is necessary for the prevention of the deterioration of industrial relations between the parties that discussion between those parties take place;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby recommends:

1. THAT the Respondent confer with the unions party to this matter no later than Monday 24 February 1997 to discuss the renewal of the Metro Brick (Cardup) Enterprise Bargaining Agreement 1994 No AG 37 of 1995 and the Metro Brick Armadale (Enterprise Bargaining) Agreement 1994 No AG 96 of 1995, such discussions to commence on the basis of the document drafted by the Respondent and provided to employees of the Respondent for their consideration.
2. THAT the parties report back to the Commission as to progress on these discussions on Tuesday 25 February 1997 at 3.00pm.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia Western Australian Branch and Others

and

Metro Brick.

No. C 387 of 1996.

COMMISSIONER P E SCOTT.

17 February 1997.

Order.

WHEREAS this is an application pursuant to section 44 of the Industrial Relations Act, 1979; and

WHEREAS conferences were convened on the 6th and 13th days of January 1997; and

WHEREAS at the conference on Monday the 6th day of January 1997 application was made by the

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch to be formally joined as a party to this dispute; and

WHEREAS a further conference was convened on the 17th day of February 1997; and

WHEREAS at that conference application was made by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch to be formally joined as a party to this dispute; and

WHEREAS the Respondent did not object to the joinder of either union;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch be formally joined as parties to this application.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Katina Pty Ltd trading as Kato Concrete Co.

No. C 402 of 1996.

COMMISSIONER P E SCOTT.

12 February 1997.

Order.

WHEREAS this is an application pursuant to section 44 of the Industrial Relations Act, 1979; and

WHEREAS conferences were convened on the 20th day of December 1996, the 28th day of January 1997 and the 30th day of January 1997; and

WHEREAS at the conference convened on the 28th day of January 1997, the respondent did not object to an application for the joinder of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; and

WHEREAS at the conference on 30 January 1997 the parties agreed that this application be divided into two parts;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act,1979 hereby orders—

1. THAT The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch be formally joined as a party to this application on and from the 28th day of January 1997.
2. THAT this application be divided into two parts, Application C 402(A) of 1996 to deal with the maintenance of existing wages of Messrs Peter McLaren, Shane Whitehouse and Ben Moody and, subject to the resolution of unfair dismissal proceedings, Charlie Coleman. Application C 402 of 1996 is to deal with the demotion and lack of provision of work to Mr Peter McLaren and lack of provision of work to Messrs Shane Whitehouse, Ben Moody and, subject to the resolution of unfair dismissal proceedings, Charlie Coleman.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Director General, Education Department of WA

No. PSAC 39 of 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

13 February 1997.

Order.

WHEREAS an Order issued in this matter on the 28th November 1996 to remain in effect until the hearing and determination of the matter in dispute between the parties;

AND WHEREAS a liberty to apply was reserved to either party to apply to vary the terms of the Order;

AND WHEREAS the applicant union has sought to exercise the liberty to apply to vary the terms of the Order;

AND WHEREAS the respondent did not agree to the proposed variation;

AND WHEREAS the Public Service Arbitrator, after hearing the parties, was of the opinion that Roma Brooks is a person covered by the undertaking made on behalf of the Director General, Education Department of WA to the applicant union dated 29th January 1996 and which, but for the dispute that is the matter referred for hearing and determination, would have been implemented;

AND WHEREAS the Public Service Arbitrator is therefore of the opinion that Roma Brooks will suffer prejudice if her employment is terminated merely due to the expiry of her contract prior to the determination of the matter referred for hearing and determination;

NOW THEREFORE, I the undersigned Public Service Arbitrator, pursuant to the powers conferred on me under the Industrial Relations Act 1979 hereby order:

(1) THAT the name Roma Brooks be inserted under the heading Public Service and Government Officers in the Order dated 28th November 1996.

(2) THAT the name Carol Monks under the heading of Ministerial Officers in the Order dated 28th November 1996 be deleted.

(Sgd.) A. R. BEECH,
[L.S] Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Disability Services Commission.

No. PSA C 45 of 1996.

PUBLIC SERVICE ARBITRATOR P. E. SCOTT.

20 February 1997.

Order.

WHEREAS this is an application for conference pursuant to Section 44 of the Industrial Relations Act, 1979; and

WHEREAS the Commission convened a conference on the 11th day of September 1996; and

WHEREAS the Commission wrote to the Applicant on the 10th day of February 1997 requesting advice on the status of the application;

WHEREAS the Applicant advised the Commission via telephone on the 18th day of February 1997 that the issues had been resolved;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979hereby orders—

THAT this application be, and is dismissed.

(Sgd.) P. E. SCOTT,
[L.S] Commissioner.

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 Margaret River District Club.

No. C 23 of 1997.

COMMISSIONER J F GREGOR.

20 February 1997.

Direction.

WHEREAS on the 3 February 1997 the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch applied to the Commission for a compulsory conference order Section 44 of the Industrial Relations Act, 1979; and

WHEREAS on the 20 February 1997 the Commission conducted a conference in Bunbury at which there was, inter alia, a discussion concerning a dispute between Shelly Bessell and The Margaret River Club; and

WHEREAS no agreement could be reached over any of the matters raised by the application; and

WHEREAS the Commission is aware that awards contain provisions of which require that the status quo remain while the parties attempt to resolve disputes; and

WHEREAS the Commission is of the view that the dispute would best be resolved if the parties and their representatives meet as soon as practicable to negotiate an outcome to the dispute; and

WHEREAS the said negotiations should be completed within fourteen (14) days; and

NOW THEREFORE pursuant to the powers conferred on it by the Industrial Relations Act, 1979, the Commission hereby directs:

(1) THAT the parties shall meet as soon as practicable to negotiate a resolution to the issues raised by this application as they relate to the hours of work and employment status of Shelly Bessell; and

(2) THAT while the negotiations in (1) hereof proceed the hours worked by Shelly Bessell shall remain in accordance with her established roster; and

(3) THAT the warning letters of 28 November 1996 and 23 January 1997 are hereby set aside; and

(4) THAT the parties are directed to complete the negotiations within fourteen (14) days of the date of this DIRECTION; and

(5) THAT the parties file in the Commission a report of the outcome of the negotiation.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Police Union of Workers

and

Hon Minister for Police.

No. C 22 of 1997.

COMMISSIONER S A CAWLEY.

7 February 1997.

Direction.

WHEREAS the parties are in dispute over the situation of applicants for Phase 3 Inspector vacancies advertised in the Police Gazette (No. 48 of 1996) published on 4 December 1996 who were non short-listed; and

WHEREAS a conference pursuant to section 44 of the Industrial Relations Act, 1979 was convened on 5 February 1997 to enable the parties to discuss the issues; and

WHEREAS at the adjournment of that conference the Commission made a number of recommendations for the purpose of assisting the parties to resolve the issues; and

WHEREAS on 6 February 1997 the respondent advised it was unable to accept all of the recommendations; and

WHEREAS the conference was reconvened on that day; and

WHEREAS discussions ensued between the parties; and

WHEREAS it is specifically noted —

(a) That the respondent stated that the formal Advance process grievance arrangements provide that the relevant recommendations for appointment will not be approved until those grievance arrangements are finalised;

(b) That the applicant Union stated it reserved its rights with respect to referring any issue to the Western Australian Industrial Relations Commission at any time; and

WHEREAS after further extensive discussion the parties were informed that the Commission would give consideration to issuing a direction on 7 February 1997 in terms disclosed to them; with the direction to issue in the form of minutes in the first instance;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby direct —

1. THAT the respondent undertake comprehensive feedback to each applicant for Phase 3 Inspector vacancies advertised in the Police Gazette (No. 48 of 1996) on 4 December 1996 who were non short-listed with such feedback to commence no later than Tuesday 25 February 1997 and be completed by no later than Friday 7 March 1997 unless good reason exists otherwise in a particular case.
2. THAT all individual rights to invoke existing grievance procedures to remain intact.
3. THAT the parties report back to the Western Australian Industrial Relations Commission in the week beginning Monday 17 March 1997 unless the parties agree otherwise.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Railways Union of Workers, West Australian Branch

and

The Western Australian Government Railways Commission trading as Westrail.

No. CR 335 of 1996.

The Western Australian Government Railways Commission trading as Westrail

and

Australian Railways Union of Workers, West Australian Branch and Others.

No. 1771 of 1996.

Railway Employees' Award No. 18 of 1969
No. 18 of 1969.

COMMISSIONER P E SCOTT.

17 February 1996.

Reasons for Decision.

THE COMMISSIONER: These matters come before the Commission in the following manner. On 30 October 1996, the Australian Railways Union ("ARU") filed an application for conference, the schedule to which application sets out the ARU's concern at Westrail's introduction of a new clothing policy which the ARU says breached the terms of the Railways Employees' Award No. 18 of 1969 ("the Award"). The union sought the Commission's intervention to ensure the retraction of the new policy and that it is revised with the input of the unions party to the Award.

The Commission convened a number of conferences in an endeavour to conciliate between the parties, however agreement was not reached. The matter was referred for hearing in the following terms:

"The Applicant says that the Respondent has instigated a new policy regarding the provision of uniforms and clothing without reaching agreement with the Applicant as required by the terms of Clause 22.—Uniforms Clothing

and Protective Equipment of the Railway Employees Award No. 18 of 1969. The Applicant seeks an Order that the new clothing policy be suspended and that the Respondent engage in negotiation with it to resolve any changes to the existing policy established in 1992.

The Respondent says that it has consulted with the Applicant and other Unions involved, it has made changes to the existing policy for good reason and objects to the orders sought."

The matter was listed for hearing on 30 January 1997.

On 9 December 1996, Westrail filed application No 1771 of 1996 to amend the Award to remove the requirement upon it to obtain the agreement of the unions party to the Award but to require that it consult with the employees or their representatives before any substantial change to the policy is introduced. Westrail sought to have this application joined with CR 335 of 1996 at the hearing on 30 January 1997. The unions consented to the joinder and the two matters were heard together.

The parties were invited to make submissions to the Commission in respect of the application of Wage Fixation Principles, in particular upon application No. 1771 of 1996 and with reference to whether the matter constitutes a special case requiring consideration by the Chief Commissioner as to it being dealt with by a Commission in Court Session. I was satisfied that the matter did require such consideration by the Chief Commissioner, it being an application to amend award safety net conditions. The Chief Commissioner has considered the matter and decided that referral to a Commission in Court Session is not necessary in these circumstances. On that basis I have continued to deal with both matters.

Further consideration of both matters in respect of the application of the Wage Fixation Principles will be dealt with later in these reasons for decision.

The relevant Award provision as it currently stands is set out in Clause 22.—Uniforms, Clothing and Protective Equipment. This clause provides:

22.—UNIFORMS, CLOTHING AND PROTECTIVE EQUIPMENT

(1) Uniforms and clothing shall be supplied by the employer as agreed from time to time between the employer and the union or unions concerned.

(2) Workers not solely employed on sheeting shall, when employed on such work, if not notified the previous day, be supplied with overalls for the time so occupied.

(3) (a) Workers in running sheds shall have available oilskins or other efficient substitutes for their use when required to work in wet weather.

(b) Where duties of an electric battery hand are performed by workers, other than electric battery hands, the employer shall have available as many plastic overcoats and pairs of plastic leggings as there are workers engaged simultaneously on such work.

Protective Equipment

(4) (a) The employer shall have available a sufficient supply of protective equipment (as, for example, goggles) (including anti flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, neoprene ear protectors, helmets, or other efficient substitutes therefor for use by the workers when engaged on work for which some protective equipment is reasonably necessary.

(b) Every worker shall sign an acknowledgment on receipt thereof, and on leaving the employment shall return same to the employer.

(c) During the time the same are on issue the worker shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(d) No worker shall lend another worker the equipment so issued to such first mentioned worker, and if the same are lent both the lender and the borrower shall be deemed guilty of wilful misconduct.

(e) Before goggles, glasses and gloves, or any such substitutes which have been used by a worker are reissued by the employer to another worker, they shall be effectively sterilised.

General

(5) (a) In addition to the foregoing, any equipment now being supplied shall be continued.

(b) The equipment shall be held by the worker and used on duty only, and shall not be sold or disposed of.

(c) Clothing need not be supplied to casual workers.

(d) Where Summer and Winter issues are provided, delivery shall be made at the beginning of the summer and winter seasons.

The clause proposed by Westrail states:

"(1) Uniforms or industrial clothing, in accordance with the employer's policy for corporate clothing issue shall be supplied by the employer and worn by the employee.

(2) Before any substantial change to the policy is introduced the employees or their representatives will be consulted."

The current dispute between the parties has arisen as a result of Westrail deciding that it needed to revise its provision of uniforms and protective clothing to employees. Robert Colin Easthope, Project Co-Ordinator in the areas of operations and workplace reform gave evidence regarding the development of the new policy and the reasons for it. It appears that they may be good reasons including that Westrail has undergone significant change in recent times which has led to a reduction in the number of employees. It makes it uneconomical to provide the previous broad range of items of clothing available for employees to choose. Further, he says that due to its obligations under the occupational health and safety legislation it is required to take account of protective measures for employees in particular those working in the sun.

Over a period of time, Westrail examined the issue of clothing and prepared a draft policy. This was referred to the executive group for endorsement. Following such endorsement in principle, the matter was raised with various unions involved in the coverage of employees of Westrail. This was done initially by letter dated 10 April 1996 (Exhibit 2) which advised that:

"An internal review has recently been undertaken on the quantity and variety of items issued as uniforms to employees as well as the method of supply and distribution.

The objective of the review was to standardise the variety and number of items issued across the broader sections of employees within Westrail.

The outcome of the review is that uniforms issued to employees have been categorised into two groups:

(1) Customer/Public Contact—Employees engaged in direct customer contact;

(2) Field Operational—Employees engaged in operational areas of Westrail.

The new uniform issues are detailed on the attached.

The method of supply and inventory is also being altered.

I would like to invite you to a briefing on changes to uniforms to be held on Tuesday, April 30 at 1400 hours in the Fourth Floor Conference Room.

Yours sincerely T F Ryan
Acting General Manager Operations."

Attached to this letter is a list of uniform issues for Customer (Public) Contact Personnel and for Field Operational Staff.

The ARU sent two observers to attend this briefing and by letter dated 26 July 1996 advised the Commissioner of Railways that:

"We finalised agreement with your Manager Human Resources for a Corporate Clothing issue dated 1 May 1992 and we are standing by that Agreement.

> If your organisation seeks to change that policy then Clause (22)(i) of the Railway Employees' Award No. 18 of 1969 is that avenue and until such time as the new policy is discussed and agreed, then the Policy 1/5/1992 prevails."

This was signed by Mr Christison, the Divisional Rail Secretary of the Public Transport Union, who in evidence before the Commission noted "which in this forum is as an organiser of the Australian Railways Union". (Transcript page 42)

By letter dated 17 October 1996 (Exhibit 4) Mr Christison again raised the issue and on this occasion said that the union had waited for a reply to its letter of 26 July 1996 but had not received a response.

A response was forthcoming by a letter dated October 22, 1996 (Exhibit 5) in which Mr Ryan advised:

> "I am aware of the policy that currently exists however, since that policy was introduced there has been significant changes occurring within Westrail, in particular the reduction in the number of employees who receive uniforms and it was considered appropriate that a review be undertaken with a view to standardise the variety and quantity of items issued.
>
> Since my letter of April 10 the uniform issue policy has been subject to some further changes. The most significant of the changes is that there will only be one group of employees covered by this policy, which will be the Field Operational Employees. The Public Contact group which in the main covers the Country Passenger Division will be dealt with by a separate arrangement. A number of other changes have been made and are reflected in the attached revised uniform issue policy.
>
> Tenders have recently been called for the supply and management of the uniforms once this has been finalised I will provide you with details of how the supply of uniforms will be managed in the future.
>
> If there is any specific aspects of the proposed policy you wish to discuss I would be happy to meet with you to do so."

The matter was then raised with the Commission and there was further correspondence and meetings between the parties in an attempt to resolve the issue, however, no conclusion was reached.

The policy referred to in Mr Christison's letter of 26 July 1996 is a detailed document (Exhibit 7) which contains a range of uniforms and industrial clothing descriptions for the various categories of employees and the options available within particular categories. A comparison between the 1992 policy and the new policy (Exhibit 8) shows the differences.

What is in dispute between the parties is the process by which change is to take place. The history of the award provision indicates that for many years, until this recent dispute, the parties have resolved the issue of uniforms by agreement between them. As far back as 1969, the Award contained, by agreement, a very detailed list of the uniforms and clothing to be supplied to each category of employee:

> eg. (a) Battery hands (S & T Sub-branch)—
> 1 suit woollen overalls for use when required
> (e) Conductors—
> 1 cap and 2 suits per annum. 1 mackintosh or overcoat every four years.
>
> (49 WAIG 631 at 636)

In 1987, the Award was amended by consent and consolidated. Clause 22.—Uniforms, Clothing and Protective Equipment was amended to provide in subclause (1):

> "Uniforms and clothing shall be supplied by the employer as set out in Schedule B of this award or as agreed from time to time between the employer and the union or unions concerned".

Schedule B in a very detailed list of classifications and their respective uniforms and clothing.

(67 WAIG 1550 at 1553 and 1560-61)

In 1993, once again by consent, Clause 22 (1) of the Award was amended This now read:

> "Uniforms and clothing shall be suppled by the employer as agreed from time to time between the employer and the union or unions concerned".
>
> (73 WAIG 754 at 756)

The transcript of proceedings for the hearing of that matter contains an explanation by Mr Hodgins for Westrail. He said:

> "The next item, commissioner, clause 22, Uniforms, Clothing and Protective Equipment; this really is simply something of an opportunity to do some tidying up as we have gone through the award. It has been the practice in the past, and that clause 22 sets out in considerable detail the uniforms and equipment which Westrail supplies to its employees. It is a clause in the award which we from time to time come down to the commission and bring up to date and, almost as we leave the commission, something is happening within the organisation that causes it to vary and so the parties have opted to in fact simply leave it as a schedule in the award rather than as part of the main body of the award."
>
> (Transcript p14-15)

In the past, Westrail has sought the agreement of the unions and there were exhibits before the Commission which show meetings were held and arrangements resolved by agreement (see Exhibits A, B, C, and D). The Commission heard evidence from employees that in the past, notwithstanding the strict letter of the policy, there has been opportunity for them to participate in determining the actual issue of uniforms which they are to receive and that in particular circumstances groups of employees would discuss among themselves what they believed was appropriate in terms of colour, style and range of uniforms. They also have a preference to maintain the range of uniform components which was previously available to them. I was most impressed by that evidence that these employees feel genuinely aggrieved that they have been faced with a fait accompli. Some of their reasoning for wanting to maintain their existing uniforms may not stand up to objective testing, but it is not for them to satisfy the Commission of the reasonableness of their existing uniform arrangements.

I am satisfied from the evidence that Westrail believed it had good reasons to re-examine and seek to amend the policy. These reasons include the changes which have taken place within its operations and the need to protect its employees in respect of occupational health and safety issues. However, the employer has an obligation under the terms of the Award to seek the agreement of the unions before implementing any change. This obligation goes beyond the requirement to consult. The Award does not allow the employer the right to alter the existing arrangements without agreement. Mr Easthope's evidence indicated that arrangements are already in train to proceed with the issue as set out in the new policy. Whilst he said in evidence that he did not accept that what was presented was a fait accompli it appears that Westrail's intention is to proceed regardless of the outcome of this hearing. The terms of Exhibit 2 and Mr Easthope's evidence make it clear that Westrail went through an internal review, made a decision then briefed the unions on its decision. They were invited to comment, but there is no indication that their agreement was sought, or was viewed by Westrail as a requirement before proceeding. In fact, Westrail has proceeded with calling for tenders and interviewing prospective suppliers with the clear intention of implementing the policy notwithstanding the very clear advice from the ARU as early as 26 July 1996 that it did not agree to the new arrangements. It is true that the ARU took some 3 months to make this view known, however, there was a need for it to consult with members and this would have taken some time. Westrail was far from prompt in its own response.

Westrail is obliged to comply with the terms of the Award. If it finds those terms too restrictive, or if it is unable to reach agreement with the unions, and it can demonstrate an unreasonableness on the part of the unions, then the course open to it is to seek to amend the aware, not ignore it. There is no evidence to indicate that the employer has been frustrated in its efforts to resolve an acceptable uniform arrangement. There is no evidence that the arrangements were inappropriately restrictive upon it and prevented it from fulfilling its obligations or created inefficiencies which were difficult and expensive for it to cope with. There is no basis, notwithstanding that its reasons for change may be good, to indicate that the past arrangement could not accommodate the changes that it needed. Instead the employer has presented the unions and the employees with its decision. Whilst the employer offered to discuss the matter with the unions there is no evidence that it genuinely intended to reach agreement. It intended to consult, not to reach agreement. If an Order of the Commission

preventing Westrail from proceeding with the new policy is to create difficulties for it then that is a matter which ought to have considered before it proceeded as it has done.

In terms of the Wage Fixation Principles, it is clear that the approach to be taken by the parties and by the Commission to the terms of employment and other award conditions require to be dealt with by agreement. Only where it is not possible for parties to reach agreement will the Commission intervene to impose a solution. In an era of enterprise bargaining, which these parties have embraced in some areas, it is clear that the employer's obligation in accordance with the Award, an obligation it has lived with for many years, is to seek the agreement of the unions. The Wage Fixation Principles encourage this as a pre-eminent approach to the resolution of issues between the parties.

The Statement of Principles—August 1996 sets out in its introduction this pre-eminence. The first two objectives are to:

> "* encourage and promote enterprise bargaining about wages and conditions of employment within the framework of the award system where existing wages and conditions in the relevant award or awards provide the safety net underpinning the process;
>
> * 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 agreement appropriate to their enterprise;"

(76 WAIG 3369)

Section 3—Role of Arbitration and the Award System notes that except for a number of specific types of claims, of which this matter is not one, "the Commission will generally not arbitrate in favour of claims to vary award wages and conditions. Existing wages and conditions in the relevant award or awards shall be the safety net underpinning enterprise bargaining." (76 WAIG 3370)

One matter remains and that is the issue of the occupational health and safety basis upon which the employer requires employees to wear long sleeves. It is clear that some employees do not work in the sun to any degree and that some employees who work in the open use the sun screen provided. Further, there is very clear evidence from employees as to their long held preference for short sleeves. At the hearing, the Commission indicated that it intended to seek independent expert advice as to the issue however, having considered the matter I think that is unnecessary bearing in mind the reasons set out in this decision. Should the employer believe that there are good grounds based on objective advice regarding occupational health and safety risks upon which it needs to make changes to the policy, its first obligation under the Award is to demonstrate that to the unions concerned. Should it have objective advice to that effect, it has not presented that advise to the Commission nor has it presented the advise to the employees or to the unions in a way which would enable the Commission to consider that the unions have unreasonably withheld their consent to the changes. Having failed to do that it can not now rely on the fact that it believes it needs to make change and have the Commission impose that change. Should the employer have been able to demonstrate that the unions had not acted reasonably in their response to a reasonable proposition which sought agreement then the Commission may have taken a different approach.

On these bases, Orders shall issue for dismissal of application No. 1771 of 1996 and requiring the employer to suspend the policy which it now seeks to implement and to engage in discussions with the unions. Only upon reaching agreement can it make any changes to the policy established, through agreement, in 1992.

APPEARANCES: Mr R Wells on behalf of the Australian Railways Union of Workers, West Australian Branch; the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch

Mr Hassell on behalf of the Western Australian Government Railways Commission trading as Westrail

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Railways Union of Workers, West Australian Branch

and

The Western Australian Government Railways Commission trading as Westrail.

No. CR 335 of 1996.

Railway Employees' Award No. 18 of 1969.
No. 18 of 1969.

COMMISSIONER P E SCOTT.

26 February 1997.

Order.

HAVING heard Mr R Wells on behalf of the Australian Railways Union of Workers, West Australian Branch and Mr A Hassell on behalf of the Western Australian Government Railways Commission trading as Westrail the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Western Australian Government Railways Commission trading as Westrail continue to apply the terms of the "Westrail Policy for Corporate Clothing Issues Uniform and Industrial Clothing" operative May 1, 1992 and any amendments agreed between itself and the unions party to the Railway Employees Award No. 18 of 1969 until such time as it reaches agreement with those unions for further amendment or replacement of that policy, or until the Commission orders otherwise.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Government Railways Commission trading as Westrail

and

Australian Railways Union of Workers, West Australian Branch and Others.

No. 1771 of 1996.

Railway Employees' Award No. 18 of 1969
No. 18 of 1969.

COMMISSIONER P E SCOTT.

17 February 1997.

Order.

HAVING heard Mr R Wells on behalf of the Australian Railways Union of Workers, West Australian Branch; the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch and Mr A Hassell on behalf of the Western Australian Government Railways Commission trading as Westrail the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this matter be and is hereby dismissed.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Shot Crete and Others

No. CR 363 of 1996.

COMMISSIONER P. E. SCOTT.

13 February 1997.

Reasons for Decision.

THE COMMISSIONER: This matter comes to the Commission following an application for conference filed by the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers on 22 November 1996. This application related to a claim for a site allowance for $2.15 per hour worked on the Pindan Construction site involving the construction of home units in Wellington Street Perth.

A conference was convened by the Commission on Tuesday, 24 December 1996, it did not resolve the matter and it was referred for hearing and determination. The parties agreed that due to the timing involved including the normal close down of such sites over the Christmas/New Year period that there was no urgency in the matter being heard. On this basis inspections of the site took place on Monday 20 January 1997 and the hearing proceeded immediately afterwards. The Commission also heard the evidence of the parties' witnesses, in this case, Mr Kim Gordon Young, Assistant Secretary of the Union who has been involved with the industry for many years, and of Mr Vincenzo Corica, Construction Manager with Pindan Constructions, who also has a number of years involvement within the industry.

The matter comes to the Commission on the basis that Clause 8.—Rates of Pay of the Building Trades (Construction) Award 1987 No. R 14 of 1978 provides in subclause (16) that the Union may make a claim for an employer to consider a site allowance to compensate for all special factors and/or disabilities on a project, and that where there is no agreement between the parties that the Commission shall determine an appropriate rate, if any, to compensate for those special factors and/or disabilities. This subclause also provides that the Commission is to use the criteria outlined in what is known as the Sapri Decision, a decision of the Full Bench of the Conciliation and Arbitration Commission dated February 25, 1983 (Print F1957). At page 6 of that decision it notes four criteria being:

"(i) In relation to a claim for a new site allowance the first issue to be decided is whether the site is one for which an allowance is appropriate. As the Unions acknowledged not all projects attract an allowance. The test is whether at 23 December 1982 the site would have attracted such an allowance. It would be quite contrary to the intention of the wage pause to grant a site allowance for areas or circumstances where one would not have customarily applied or in any other way to create a precedent for the extension of site allowances beyond the areas or circumstances to which they have previously applied.

(ii) As to the quantum of any allowance, this should be assessed on the same basis as immediately prior to 23 December and therefore the levels should not exceed what would have been appropriate at that date for the circumstances on the site.

(iii) Fixation of a new site allowance should have no regard to other site allowances, even in the immediate area which have not been assessed by the Commission or where the Commission is not satisfied that the amount agreed between the parties is appropriate.

(iv) The foregoing applies to all claims for site allowances made before 23 December 1982 and not determined at that date as well as new claims after that date."

The site inspected by the Commission is in Wellington Street in East Perth. The project is the building of a six storey residential unit development with an approximate value of $4.2 million. The building materials are essentially concrete and brick with a tile roof.

Work commenced on the site in August 1996 and is due for completion in September 1997. The average work force on site is between 20 and 25, peaking at approximately 40 around the middle of 1997.

The factors which the Union says warrant the payment of the site allowance are:

1. Exposure to a high level of traffic;
2. Restricted assess;
3. Increased manual handling, limited set down areas and a lack of on-site parking;
4. Overlap of trades
5. Cranes working overhead.

The Union seeks an Order for the payment of the site allowance effective from the date of filing application C363 of 1996 being 22 November 1996.

The respondents on the other hand rely on submissions made to the Commission as presently constituted in matters CR 170 and CR 171 of 1996. These matters also related to Pindan Construction sites but on those occasions in West Perth. They say that it is for the applicant to prove that there are disabilities on site and that the disabilities experienced go beyond those comprehended within the terms of the Award. Further, the respondents say that the Commission is also obliged to examine the matter on the basis of the Wage Fixation Principles arising from the most recent State Wage Case Decision, in particular, the Work Value Principle.

I have considered the arguments raised by the respondents in respect of the Wage Fixation Principles by Mr Richardson adopting his submissions in CR 170 and CR 171 of 1996. I adopt my reasons as set out in that matter and find that in the circumstances of the Award providing within Clause 8.—Rates of Pay, provision exists for the Commission to consider a site allowance and with that clause setting out the criteria to be used, that the Commission is determining an allowance already provided for in the Award. On this basis, there is no requirement for the matter to proceed pursuant to the Wage Fixation Principles.

As to the issues raised in evidence as to the reasons for the employers in this case not reaching agreement with the Union for a site allowance, the fact is that the parties have come to the Commission in accordance with the terms of the Award for the determination of a site allowance. The employers' reliance upon the Building Industry Code of Practice as its justification for not reaching agreement with the Union is something that they are entitled to do in the circumstances.

Having examined this site I am satisfied that it is one which warrants consideration in accordance with the first of the criteria set down in the Sapri Decision. It is a residential construction site but involves a multi storey building as well as other buildings on site. It is similar to those matters referred to by the respondents in CR 170 and CR 171 of 1996 in that these are inner city residential units on very limited land and involving restricted access to the site with the buildings taking up a large proportion of the available land. This particular matter also has some of the elements involved in CR 145 of 1996 which was construction of residential units on Wellington Street in West Perth. I am satisfied that disabilities do exist in relation to the size of the site and its restrictions, the difficulties of access including traffic on a major road. There is certainly some limitation to parking. I note however, that the basement is being used in a limited way for lay down areas but the movement of the mechanical forklift in the basement to deliver packs of bricks etc. to the hoist or for the removal of rubbish does not appear to constitute any real restriction in that regard. Whilst there is an overlap of trades on the site it would appear that those trades work in a progression which means that there should not be any considerable difficulty associated with being on the site at the same time. Generally, they are not working in the same area at a given time but move from one section of work to another in an organised process. Even so, there are some limited disabilities associated with the overlap.

This site has, as noted earlier in these reasons, certain aspects which are similar to those in CR 170 and 171 of 1996, and also CR 154 of 1996 those matters attracted site allowances of 70 cents, 80 cents and $1.10 per hour respectively. However, circumstances of this case warrant a site allowance of $1.00 per hour due to the disabilities noted. Those disabilities are not provided for within the Award.

As to the operative date, in accordance with the supplementary Reasons for Decision of Beech C in Fini Homes (71 WAIG 2409) it is appropriate to give retrospective effect as provided for in Section 39 of the Industrial Relations Act 1979, to the date of filing of the application for conference, being 22 November 1996.

Order accordingly.

Appearances: Mr G Giffard for the Applicant.

Mr K Richardson for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Shot Crete and Others.

No. CR 363 of 1996.

Building Trades (Construction) Award 1987

No. R 14 of 1978.

COMMISSIONER P E SCOTT.

26 February 1997.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Richardson on behalf of Shot Crete and Others, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. That notwithstanding the provisions of the Building Trades (Construction) Award 1987 (No. R 14 of 1978) employees employed by Shot Crete, Leslie Concrete, Mr Formwork WA Pty Ltd and MGR Bricklaying, to carry out work on the Pindan Construction unit development site, Wellington Street, Perth shall be paid $1.00 per hour worked in lieu of and in substitution for all special rates and conditions described in Clause 9 Subclause (1) of the Building Trades (Construction) Award 1987.
2. The abovementioned rate shall apply on and from the 22nd day of November 1996 until the conclusion of the project.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

The Honourable The Minister for Education

First Respondent.

Director General, Education Department

Second Respondent.

No. PSACR 39 of 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

13 February 1997.

Reasons for Decision.

PUBLIC SERVICE ARBITRATOR: By letter of the 29th January 1996 the Education Department gave an undertaking to The Civil Service Association of Western Australia Incorporated (the CSA) to grant permanent level 1 status to all contract and temporary public servants with two years' continuous service. In early March 1996 nineteen such employees were, in fact, made permanent. By letter of the 28th March 1996, and as part of the terms of settlement of an Enterprise Bargaining Agreement between the parties, the Education Department agreed to grant permanency to long term temporary ministerial officers employed in schools. The criterion for granting permanency to those employees was that they must have been employed continuously within the Department for at least two years. The Enterprise Bargaining Agreement was registered on the 21st May 1996 (*The Education Department of WA (CSA) Enterprise Bargaining Agreement 1996, No. PSA AG 7 of 1996*). In late July 1996 the Education Department received advice from the Crown Solicitors' Office that the Education Department's practice of appointing public service officers and ministerial employees without regard to merit selection requirements and without making appointments to vacant positions was in breach of the *Public Sector Management Act 1994*. The CSA disagreed with the Department's position. As a result, the Education Department informed the CSA that the practice could not continue. After discussions between the parties failed to resolve the matter it was brought to the Public Service Arbitrator and eventually referred for hearing and determination.

Essentially, the CSA seeks an order from the Public Service Arbitrator requiring the Education Department to implement its undertaking. In the event that the Public Service Arbitrator is satisfied that the *Public Sector Management Act 1994* is, indeed, a barrier to the Education Department honouring its undertaking the CSA seeks an order entitling those employees to the same treatment, benefits and entitlements in relation to conditions of employment, redundancy and redeployment, training and access to promotion on transfer, as permanent employees.

The Education Department opposes the claim on the grounds that the *Public Sector Management Act 1994* prevents it from honouring its undertaking and that the Public Service Arbitrator is not able to otherwise effectively grant permanency, or the conditions attaching to a permanent employee, by way of an order under the *Industrial Relations Act, 1979.*

This application concerns two classes of employee. These classes are set out in s.7 of the *Education Act, 1928*. Section 7(1) provides that there shall be appointed under and subject to part 3 of the *Public Sector Management Act 1994* such other public service officers as may be necessary for the due administration of the Act. By s.7(2) the Minister may, in relation to the Education Department, appoint employees other than public service officers of that Department. It is convenient to refer to the former class of employees as "public service officers" and to the latter class of employees as "ministerial employees". Although the application was filed and served only upon the Director General, Education Department, it is apparent that there are two employers concerned. In the case of public service officers, the employer is the Director General, Education Department. In relation to ministerial employees, the employer is The Honourable the Minister for

Education. Both employers appeared before the Public Service Arbitrator and, by consent, the Public Service Arbitrator amended the matter before it such that both employers are cited as respondents.

However, it is apparent from the provisions of s.7 of the *Education Act, 1928* that different considerations arise as between the two classes of employees when this issue is considered. For convenience I propose to deal firstly with the Department's undertaking as it relates to granting permanency to all contract and temporary public servants with two years' continuous service with the Education Department.

PUBLIC SERVICE OFFICERS

It is appropriate to note that the Director General indicated her willingness to honour the undertaking made by the Education Department. The sole issue for determination here is whether the *Public Sector Management Act 1994* prevents her from doing so. Section 64 of the *Public Sector Management Act 1994* is now set out:

64. (1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or any workplace agreement made under the *Workplace Agreements Act 1993*, the employing authority of a department or organization may in accordance with approved procedures appoint for and on behalf of the Crown a person as a public service officer (otherwise than as an executive officer) on a full-time or part-time basis —

(a) for an indefinite period as a permanent officer; or

(b) for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(2) An appointment under subsection (1) shall be to such level of classification and remuneration as is determined by the relevant employing authority —

(a) in accordance with approved procedures; and

(b) as being appropriate to the functions to be performed by the person so appointed.

(3) The employing authority of a department or organization shall —

(a) in accordance with approved procedures; and

(b) at the time of the appointment of a person under subsection (1) or, if that employing authority considers it impracticable to make the appointment concerned at that time, at a later time,

appoint the person to fill a vacancy in an office, post or position in the department or organization.

(4) Subject to subsection (5), a person appointed under subsection (1) (b) cannot apply for an appointment under subsection (1) (a) unless the relevant vacancy has first been advertised in a daily newspaper circulating throughout the State.

(5) Subsection (4) does not apply to a person —

(a) appointed under subsection (1) (b); and

(b) having, or occupying an office, post or position having, the lowest level of classification at which persons of the same prescribed class as that person are at the relevant time recruited into the Public Service.

(6) The employing authority of an organization shall not make an appointment under subsection (1) unless the written law under which the organization is established or continued authorizes or requires the appointment or employment of public service officers for the purposes of that organization.

(7) Nothing in this section prevents a public service officer who holds an office, post or position in one department or organization from being appointed, whether by way of promotion or otherwise, to an office, post or position in another department or organization.

The argument put on behalf of the Director General is essentially that it is not possible to simply appoint a person as a permanent public servant. The effect of ss.64(1) and (3) is to require the appointment to follow approved procedures and it must be an appointment to a vacant position. However, I am not persuaded that the section compels that conclusion for the following reasons.

It will be seen that s.64(1) deals separately with the appointment of a person (as distinct, for example, from the person's classification or appointment to a vacant position) and is stated to be "subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979*". I agree with Mr Matthews that the section is inelegantly worded. Read literally, those qualifying words apply only to s64(1) and not to the whole of s.64. The words "subject to this section" mean that the section is to be read as a whole. Sections 64(2), (3), (4), (5) and (6) each refer back to 64(1). Therefore although s64(1) is subject also to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* it cannot be read in isolation from the rest of the section. However, it cannot be thereby ignored that s.64(1) is subject to any binding award, order or industrial agreement under the *Industrial Relations Act 1979*.

Mr Matthews suggested that those words apply only to paragraphs (a) and (b) rather than to the body of s.64(1). However their use at the beginning of s.64(1) rather than at the start of those paragraphs would suggest otherwise. It is not immediately apparent to me why an order of the Public Service Arbitrator could not affect the operation of s.64(1) as a whole. The operation of the section as a whole is as much preserved if those words apply to the whole of s.64(1) as if they only apply to (a) and (b) because the words "subject to this section" ensure that the effect of any departure from s.64(1) ordered by the Public Service Arbitrator is not to allow the balance of the section to be also departed from. Any appointment ordered by the Public Service Arbitrator under s.64(1) for example would still be subject to s.64(3). I therefore conclude that s.64(1) itself does not preclude the making of an order of the nature sought in this application. An order in the terms sought would not put the Director General in conflict with s.64(1) because that subsection is subject to the order.

I turn to s.64(3). By s.64(3) the Director General shall appoint the person to fill a vacancy in an office, post or position in the Education Department in accordance with approved procedures either at the time of the person's appointment under subsection 64(1) or, if that is impracticable, at a later time. It follows that a person may be appointed as a public service officer on a full time basis for an indefinite period as a permanent officer without being appointed at the time to fill a vacancy if it is impracticable to do so. Therefore I do not accept the very able submissions of Mr Matthews that it is not possible to simply grant a person permanent status. Section 64(1) deals with the appointment of the person as a public service officer and section 64(3) permits the separate appointment at a later time, in accordance with the approved procedures, of that officer to a vacant office, post or position if it is impracticable to do so at the same time. It therefore is indeed possible to simply appoint a person as a public service officer on a full time basis for an indefinite period as a permanent officer if it is impracticable at the time to appoint the person to a vacant office, post or position.

I understand that it is common ground that none of the persons the subject of the undertakings act or work in vacant positions. As I find, that is not fatal to their appointment as a public service officers. It is not a part of the undertakings that the persons would be made permanent only if there were vacant positions. All that is necessary is that the persons have two years' continuous service. But in connection with that understanding I observe that the Director General is able to create "offices" (s.36(1) and (2)). It seems to me therefore that the *Public Sector Management Act* gives to the Director General the authority to create an office or offices to address that issue. That is a matter for the Director General to decide. I add that I do not know what difference there is between an "office", a "post" or a "position". Indeed, in the absence of argument on the point, I suspect that there is very little difference but s.64(3) uses all three descriptions while s.36 restricts itself to only the one. I also observe that Schedule 3 of the *Public Service Notices* of the 13th November 1996 (it appears that both sides agree that the "approved procedures" are those set out in the *Public Service Notices* of November 13th 1996) are stated as applying to both s.64(1)(a) and (3)(a) but seem

to refer to "where a vacant public service office is to be substantively filled".

I find therefore that, as a matter of construction, unless a binding award, order or industrial agreement under the *Industrial Relations Act, 1979* otherwise permits, if the Director General exercises her discretion to appoint a person as a public service officer on a full time basis for an indefinite period as a permanent officer the appointment must be in accordance with approved procedures. I further find that the Public Service Arbitrator may, by order made under the *Industrial Relations Act, 1979* order the appointment of persons as public service officers on a full time basis for an indefinite period as permanent officers. Further again, I find that following such an order the Director General would then act in accordance with s.64(3) and appoint them, in accordance with approved procedures, to a vacant office, post or position unless, at that time, it is impracticable to do so.

MINISTERIAL EMPLOYEES

It is appropriate to note here that the Public Service Arbitrator understands that the Minister, as did the Director General, accepts the undertaking made upon his behalf. The only impediment to the Minister implementing the undertaking is the extent to which the *Public Sector Management Act 1994* prevents him from doing so. As previously noted, the power of the Minister under s.7(2) of the *Education Act, 1928* is unconstrained by a legislative requirement to observe part 3 of the *Public Sector Management Act 1994*. The Minister is able to appoint employees other than public service officers of the Education Department as he sees fit. I would be quite ready to conclude that the Minister should have regard to the principles set down in the *Public Sector Management Act 1994* and that those principles would caution against appointing a person as a ministerial employee in the Education Department based only upon the person's length of service. However if the *Public Sector Management Act 1994* itself enables the appointment of a person as a public service officer by order of the Public Service Arbitrator, I find it difficult to reach a conclusion that the appointment of ministerial employees by order of the Public Service Arbitrator arising from proceedings such as this is not similarly open. I note that the *Industrial Relations Act, 1979* applies to and in relation to matters dealt with by the *Public Sector Management Act 1994* unless that latter Act specifies otherwise (s.6(2)). In the issues raised in this matter, it does not specify otherwise. I therefore find that the Public Service Arbitrator may, by order made under the *Industrial Relations Act, 1979* order the appointment of employees of the Education Department. A similar such order was issued by a constituent authority of the Commission in earlier, unrelated, proceedings (*SSTU V Minister for Education* (1994) 74 WAIG 3153, and the subsequent appeals (1995) 75 WAIG 843 (FB), 2677(IAC)). I accept that the issue of the *Public Sector Management Act* was not raised in that matter but on the conclusions reached by me in this matter, while that Act may affect the ability of an employing authority to appoint persons other than in accordance with that Act, I do not find that that Act removes the power of the Public Service Arbitrator to make an order to that effect. Indeed, as I have stated, s.64(1) is expressly subject to that power. I therefore find that the Public Service Arbitrator may by order require the Minister to implement its undertaking and appoint the persons covered by the letter of the 28th March 1996.

I turn then to consider whether the Public Service Arbitrator ought, as a matter of equity, good conscience and substantial merit make the orders as sought. There are public policy implications here. The general principles of the *Public Sector Management Act* envisage the appointment of persons in accordance with approved procedures. The Commission should not, by its order, require a person to act contrary to that Act. This is by reason of a public policy to discourage persons acting contrary to the law. But, as the High Court recently observed, once we are in the realm of public policy, we are in a rather shadowy world (*Nelson v Nelson* (1995) 132 ALR 133 per Toohey J at 178). There is more than one public policy operating here. There is, in this case, a further public policy of ensuring that parties to an industrial matter adhere to the bargains that they have freely entered into. The undertaking to appoint ministerial employees was given on behalf of the Minister in settlement of an industrial dispute concerning the claim for an enterprise bargaining agreement. The undertaking given was accepted by the CSA as part of the consideration of agreeing to the Enterprise Bargaining Agreement.

It ought go without saying that the emphasis in industrial relations upon parties negotiating and concluding agreements places the credibility of the parties to the negotiations firmly on the agenda. If the undertakings given on behalf of the Director General and the Minister are not able to be fulfilled then the credibility of the Department (and thus the Director General and the Minister) is thereby damaged. A deal is a deal. The parties have not submitted to the Public Service Arbitrator what they regard as the consequences for the EBA itself if part of the consideration given by the Department to secure the consent of the CSA to the EBA is not honoured. In my view, the Public Service Arbitrator should be slow to allow a party which freely gave an undertaking in part settlement of an industrial dispute from resiling from that undertaking. In that context I note that the undertakings given were given prior to the advice being received from the Crown Solicitor's Office. I conclude therefore, that the equity, good conscience and substantial merit lies in the Public Service Arbitrator, in the circumstances of this case, making an order as sought.

It follows from the above that the CSA is entitled to an order from the Public Service Arbitrator requiring the respondents to this application to forthwith appoint the persons covered by the undertakings given by them respectively in accordance with those undertakings. I note that the order sought by the CSA contains a definition of continuous employment. However, the undertakings given did not contain any definition. The definition claimed was not the subject of separate argument and I am unaware of the extent that the definition is agreed. As the order to issue is to require the undertakings to be implemented, I have not included the definition. If the parties agree to its inclusion, it will be included in the order.

The Minute of a Proposed Order now issues.

Appearances: Mr F. Furey on behalf of the applicant.

Mr D.J. Matthews (of counsel) and with him Ms H. Syme appeared for the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

The Honourable The Minister for Education

First Respondent.

Director General, Education Department

Second Respondent.

No. PSACR 39 of 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

19 February 1997.

Supplementary Reasons for Decision.

THE PUBLIC SERVICE ARBITRATOR: At the conclusion of the speaking to the minutes only one matter remained that was not able to be dealt with during the course of the proceedings. The issue is whether the undertaking give by the Department in relation to ministerial employees is restricted to Level 1 employees only. The respondent indicates that it was, because the undertaking given was that the "same criteria" applied to both ministerial employees and public service officers.

The Civil Service Association of Western Australia Incorporated however, argues that the undertaking given in relation to ministerial employees contains a qualification which only relates to the period of continuous employment.

I have re-read the transcript in this matter and have also taken into account, after notifying the parties of my intention to do so and giving them an opportunity to be heard, the schedule attached to the originating application in this matter and the correspondence between the parties which was submitted

in support of that application. In my view it is quite clear that both parties have dealt with the undertaking in relation to ministerial employees on the basis that it applied to Level 1 employees only and I find accordingly.

I also take into account the comment made by Mr Furey during the course of the hearing (transcript p.70) wherein he stated that the order sought in these proceedings applied to Level 1 employees only. I do add that, if the other documentation to which I have referred was not so clear, then Mr Furey's comment by itself may not be determinative given that the comment to which I have referred was made at a time when he was drawing my attention to issues relating to public service employees. However, for the reasons I have given the order to issue in relation to ministerial employees is restricted to level 1 employees as it is in the case of public service officers.

The order now issues.

Appearances: Mr F. Furey on behalf of the applicant.

Ms H. Syme and with her Mr E. Barlow appeared for the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

The Honourable The Minister for Education

First Respondent.

Director General, Education Department

Second Respondent.

No. PSACR 39 of 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

19 February 1997.

Order.

HAVING heard Mr F. Furey on behalf of the applicant and Mr D.J. Matthews (of counsel) and with him Ms H. Syme on behalf of the respondents, the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

(1) THAT the Honourable the Minister for Education grant permanency to temporary level 1 ministerial employees employed in schools continuously for at least two years.

(2) THAT the Director General, Education Department grant permanent level 1 status to all contract and temporary public servants with two years' continuous service.

(Sgd.) A.R. BEECH,
[L.S] Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

The Honourable The Minister for Education

First Respondent.

Director General, Education Department

Second Respondent.

No. PSACR 39 of 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

21 February 1997 .

Correcting Order.

WHEREAS the Public Service Arbitrator issued an Order in the above matter on the 19th day of February 1997;

AND WHEREAS an error occurred in the Order;

NOW THEREFORE, I the undersigned, Public Service Arbitrator, pursuant to the power conferred on me under the Industrial Relations Act 1979 hereby issue the following correction—

THAT the Order in this matter dated the 19th day of February 1997 be corrected by deleting Orders (1) and (2) of the Order and inserting in lieu thereof the following text:

(1) THAT the Honourable the Minister for Education grant permanency to temporary Level 1 ministerial employees employed in schools continuously for at least two years.

(2) THAT the Director General, Education Department grant permanent status to all Level 1 contract and temporary public servants with two years' continuous service.

(Sgd.) A.R. BEECH,
[L.S] Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Prison Officers' Union of Workers

and

The Hon. Attorney General (First Respondent) and Ministry of Justice (Second Respondent)

No. CR 330 of 1996.

COMMISSIONER J. F. GREGOR.

3 February 1997.

Reasons for Decision.

THE COMMISSIONER: On the 25 October 1996 the WA Prison Officers' Union of Workers (WAPOU) applied for a conference pursuant to section 44 of the *Industrial Relations Act 1979* (the Act), to resolve a dispute between the WAPOU and the Ministry of Justice (MOJ) concerning human immunodeficiency virus (HIV) risk management in prisons. The application advised that the MOJ policy denies prison officers the right to know or be officially informed of the medical status of HIV positive prisoners. This was said to place prison officers at an unacceptable level of risk and raises issues concerning occupational health safety and welfare, security, duty of care and legal liability.

The Commission responded to the application by convening a conference which took place on the 4 November 1996. Parties were asked to consider a number of suggestions designed to assist in the resolution of the dispute. At the conference the Commission requested an assurance from the MOJ that integration would not take place until the appropriate training

and equipment had been conducted and supplied; the assurance was given. A further conference to discuss the issues took place on the 25 November 1996. At the conclusion of that conference the matter had not been settled between the parties and at their request were referred for hearing and determination.

The schedule to the Memorandum of Matters for Hearing and Determination delineates the matter to be determined in the following terms:

> *"The right of employees in prison operations to be advised of the identification of persons who are known to carry blood borne communicable diseases, taking into account the responsibilities imposed upon prison officers under the Prisons Act to handle such information.*

When the matter came on for hearing on 12 November 1996, Mr J Long of Counsel who appeared for the WAPOU sought leave to amend the description of the matters to be determined. The amendment was not opposed by Mr A Sefton of Counsel who appeared for the respondents and the Commission allowed the amendment. In its final form the matter for determination is as follows:

> *"The right of employees in prison operations to be advised of the identification of persons who are known to carry blood borne communicable diseases, taking into account the responsibilities imposed upon prison officers under the Prison's Act to handle such information.*
>
> *The Applicant seeks the following relief:*
>
> 1. *An order that the Ministry of Justice be required to provide information identifying the diagnostic status of any prisoner with blood borne communicable disease to Unit Managers employed in Western Australian prisons.*
> 2. *Further, an order that Unit Managers be empowered to authorise the disclosure of information to Prison Officers within the management team and subject to the requirement that the information is given solely for the purpose for providing for the welfare of the prisoner or the management, control and security of the prison in which the prisoner is being held.*
> 3. *Such other orders or relief as the Commission deems appropriate.*

The matter was heard on the days of the 12 and 16 December 1996. The hearing continued on the 15 January 1997 when at conclusion of the proceedings the Commission reserved its decision. During the hearing a large volume of evidentiary material was placed before the Commission in the form of various documents and the viva voce evidence from eight witnesses, three on behalf of the WAPOU and five on behalf of the Respondents.

To put these Reasons for Decision in context it is necessary to recite some of the history which is relevant to the Matters for Determination. The recitation of the early history will show some concentration upon the experience with the handling of HIV positive prisoners within Western Australian prisons. For the purposes of this case it should be noted that the parties before the Commission in conference and as reflected in the description of the matter for arbitration, preferred to deal with the range of diseases which are susceptible to blood borne communication. In this case they are Hepatitis B, Hepatitis C and HIV.

According to the evidence, prior to 1985 the MOJ was experiencing difficulties with management of HIV positive prisoners. In 1985 an AIDS Standing Committee was established. This was the initial response of the then Prisons Department to a problem which had sprung up around Australia on the issue of management of HIV prisoners. Potential problems for prison systems in Australia had become significant. The committee had representation from relevant personnel in the Western Australian prison system such as psychology, health, education and union.

It is also relevant that in addition to the common law, the governance of prisons in Western Australia is prescribed in the main by the Prisons Act 1981 and Regulations. The Occupational Health Safety and Welfare Act of 1984 (OHSW Act) is important too but there is also another set of rules which have developed known as the Director General's Rules. The power for the making of these rules is unclear from the evidence before the Commission. The Director General's Rules are not made in the sense that they are regulations approved by parliament. From the evidence before the Commission it appears though that the contentious rules made under the Director Generals powers have always been approved by the Minister of the day usually by the Minister signing the original of the instrument which contains the rule.

The AIDS Standing Committee established in 1985 developed the first departmental policy on the issue and the Director General's Rule known as Rule 3Q was drawn up. The rule has been refined over the years but essentially the core elements of the policy were in place until July 1994 when applications were made to the Equal Opportunity Commission of Western Australia by way of two complaints from HIV positive prisoners against the Respondents. Rule 3Q required as a fundamental provision that the supervision of HIV prisoners be by way of direct line of sight between the prison officer and the HIV positive or AIDS prisoner. These rules were made in the context that in 1985 the HIV phenomenon was fairly new. There were predictions being made that prisons could be incubators of the HIV virus. In prisons in Western Countries there were serious concerns about the potential for a major epidemic. The persons who drew the policy in 1985 were facing something that was essentially an unknown quantity at that time. They did not have any idea about the number of cases that might occur or the extent to which in fact prisons may be incubators. From the content of Rule 3Q it is apparent that the view was formed that the approach to the problem should be cautious and careful.

In general terms the management regime under Rule 3Q, which was titled *Prisoner Infectious Disease Management Procedures*, dealt with various aspects of the care and management of prisoners who were either suspected or confirmed as having a serious infectious disease. Rule 3Q required all male HIV prisoners to be placed at Casuarina Prison, a maximum security prison. There to be accommodated in an Infectious Diseases Unit later called a Special Care Ward, in the prison's infirmary. In broad, Rule 3Q required that HIV positive prisoners be treated as a special segregated group, be accommodated in the Infectious Diseases Unit subject to close supervision when outside the unit and restricted in the movements and activities within the prison moreso than any other prisoner.

As mentioned earlier, 1994 the Equal Opportunity Commission (EOC) of Western Australia dealt with two complaints from HIV positive prisoners against the application of Rule 3Q to them (*the Complainant and the Complainant v. State of Western Australia (*1994) EOC92-610). The result of the hearing of those complaints was that the Equal Opportunity Tribunal found that the complainants had been discriminated against because on the ground of their impairment they were confined in accordance with the management regime set out in Rule 3Q. As a result of that decision the Equal Opportunity (Infectious Diseases) Regulations 1994 WA were made. The effect of the regulations was to exempt the State and MOJ from the operation of the Act for six months ending in June 1995. The effect of the Regulations provided immunity for the respondents for a six months period during which they would review and implement new policy. In August 1994 on the application of the Respondents an exemption from the operations of various provisions of the Disability Discrimination Act 1992 (Cth) (DD Act) was granted for a period of three months. The purpose of the exemption was to allow the prison authorities to rectify the situation that had been held to be discriminatory by the Equal Opportunity Tribunal in Western Australia. In 1996 there were a further complaints lodged against the Respondents in these matters which were subject to hearing before the Human Rights and Equal Opportunity Commission (Cth) (HREOC) during March and May 1996. In November 1996 the HREOC published its decision in which a series of findings were made that the complaints were substantiated. In short the conduct of the Respondents in this matter had been in breach of the DD Act.

In the meantime in particular in 1991, a consultative committee to deal with blood borne communicable diseases had been established by the MOJ to examine the management of HIV prisoners within the prison system. It had a charter to develop training for prison officers and staff and education programmes and packages for prisoners. Although the

committee deliberations extended to HIV only in the first instance, they extended later to Hepatitis B, Hepatitis C and TB. According to the evidence before the Commission that litigation in 1994 before EOC and the HREOC was underway was known to members of the committee. Rule 3Q had been subject to amendment but had not been replaced. For instance, training packages for prisoners and prison officers had been developed to reflect the outcomes of the HREOC enquiries and an officer had commenced writing a draft for a new Director General Rule 3Y. That draft was placed before a new consultative committee which included persons such as the Director of Prisons Operations, the Acting Executive Director, the Director of Health Services and union representatives. Drafts of the policy were also sent to the Crown Law Office.

In due course a draft Rule 3Y to replace Rule 3Q was reviewed and approved by a range of senior officers within prison operations. Exhibit L4 contains a copy of the draft Rule. The exhibit indicates that the Rules have been reviewed and approved by the Senior Assistant Crown of Counsel, the Acting Director of Corrective Services, the Manager of the Intelligence Unit and the Acting Director of Prison Operations. There was not complete unanimity. The document contains a notation against the name of Dr David Bockman, the Director of Health Services. The notation reads:

> *"I am not prepared to endorse this in its present form. I have prepared an alternative draft instead. It is my belief that the alternative draft is a more honest reflection of both the medical requirements and IR discussions that have taken place already." (Exhibit L4)*

It was this failure to agree to the document by the Director of Health Services which caused a delay to occur from them on. According to the evidence this was because the then Director of General of Prisons, Mr Grant, had said the rule would be only introduced when there was consensus. According to the evidence the health representatives on the committee absented themselves from a number of the meetings held on to the drafting of Rule 3Y and instead drafted their own version of Rule 3Y. In the hearing this draft was referred to as the "medical draft" and created a management regime which was very much medically orientated. Unfortunately the draft approved by the majority of senior management, and one WAPOU member was known as the 'union draft'. It certainly was not a union draft although the WAPOU was party to it.

The person occupying the office of Director General of Prisons changed. An Acting Director General who was an ex-medical practitioner was appointed. Soon a new medical orientated draft and was presented, fait accompli, after having being signed by the Minister. It was this document that is the centre piece of the dispute between the parties and is before the Commission. (Exhibit L8). The document is in two parts. The first, HIV Risk Management in Prisons and the second, HIV Confidentiality Protocol. The second part of the document has the hallmarks of a legal drafting in that the language in it is not that which would be easily understood in a prison setting.

I now examine the occupational health and medical evidence which has been presented to the Commission during the course of the hearing. There is a Code of Practice relating to Hepatitis B And HIV/AIDS in the Workplace (the Code of Practice). The Code of Practice is made against the following legislative background. The OHSW Act provides for the promotion, cooperation and administration and enforcement of occupational health safety and welfare in Western Australia. The Act places duties on employers and employees, self employed persons, manufacturers, designers, importers and suppliers. There is an emphasis on prevention of accidents, injuries and disease. The OHSW Act is supported by a further tier of statute, commonly referred to as the Regulations together with lower tiers of non statutory Codes of Practice and Guidance Notes. The Regulations have the effect of spelling out specific requirements of the OHSW Act and are enforceable. The Code of Practice is defined in the OHSW Act as a document prepared for the purpose of providing practical advice on prevention strategies and means for achieving any code, standard rule, provision or specification relating to occupational health safety or welfare in Western Australia. The Code of Practice does not have the same legal force as a regulation and a breach of the Code and it is not sufficient reason of itself for prosecution under the Act.

The Code of Practice presented to Commission in Exhibit L7, relates to practical guidance and strategies to reduce the exposure of persons in the workplace to Hepatitis B, HIV infections and AIDS related diseases. There was evidence given to the Commission by Mr R Bryant and Dr B Dare who are both members of the Occupational Health Safety and Welfare Commission, Dr Dare having the responsibility of providing expert advice in areas relating to blood borne communicable diseases. A committee of which Dr Dare and Mr Bryant are members is currently working on a replacement to the Code of Practice which is before the Commission (Exhibit L7) and which had been accepted by the Minister for Labour Relations the Hon. Graham Keirath, MLA. In accepting a recommendation that Code of Practice issue the Minister acted in accordance with the powers vested in him by S57 of the OHSW Act.

In broad the Code of Practice deals with the health effects of the relevant diseases, measures for cooperation and consultation, suggestions concerning prevention and control procedures and protective measures all of which have relevance to the proceeding before the Commission. It deals with occupations at risk and potential risk. In the first group are people who work in health care facilities including hospitals, outpatient clinics, medical centres, blood banks, laboratories, doctors surgeries and health centres. In the current Code of Practice the occupations at potential risk include sanitation plumbing workers, acupuncturists, tattooists, ear piercers, hair removers, police officers, fire fighters, ambulance personnel, prison officers, emergency first aid providers, pool attendants, lifesavers and life guards. According to the Code of Practice there are employer responsibilities under the Equal Opportunity Amendment Act 1988 EO (Act) which provides that employers must not discriminate against an employee on grounds of impairment, in this case with Hepatitis B or HIV/AIDS in the workplace. Employees with Hepatitis B or HIV/AIDS should be treated in the same manner as any employee with a non related illness eg: Cancer, heart disease. While any information pertaining to an individual's Hepatitis B or HIV/AIDS status is to be kept confidential, health care workers and emergency service providers who may become infected with Hepatitis B or HIV/AIDS have special obligations in relation to risk to others and require special advice on their obligations in the workplace.

The Code of Practice refers to the principle of universal precautions, now known as standard precautions, which are intended to prevent infection by parenteral eg: inoculation, mucus membrane eg: splash into the mouth; conjunctival eg: splash into the eyes; non-intact skin eg: contamination of cut on the hand. The concept of standard precautions requires application to all persons being treated to protect workers from known and unknown pathogens in persons under care. The main principles of standard precautions are:

- handwashing after any contamination of hands;
- care of intact skin;
- protection of damaged skin by covering of water-proof dressing or gloves;
- proper handing and disposal of sharps; and
- good hygiene practices to prevent most infections.

According to the evidence of Mr Bryant and Dr Dare there were discussions during the deliberations of the committee dealing with a replacement Code of Practice to the current Hepatitis B and HIV/AIDS in the workplace protocol. A major difference in the new Code of Practice that the committee has agreed, subject yet to approval of the Minister under section 57 of the OHSW Act, is that the confidentiality net which is set out in the existing protocol be extended to include prison officers. In addition to his viva voce evidence Dr Dare provided a report which he had prepared at the request of the Respondent. The report (Exhibit S2) includes a summary which identifies the major principle for managing occupational health safety and welfare in the workplace. That principle involves the basic steps of hazard identification, risk management and risk control and is embodied in the OHSW Regulation 3.1.

In this report Dr Dare refers to the use of standard precautions and makes the comment:

> *"Definite safe work practices obviously need to be developed to minimise the risk of infection with a blood borne virus, but I consider the need to know the effective*

status of a prisoner is not part of the safe work practices or control strategies."

This statement is at odds with the proposed new Code of Practice for Hepatitis B and HIV/AIDS. As indicated previously the new code extends the confidentiality net to include prison officers. When questioned on the matter Dr Dare said that he agreed to the change in an effort to achieve consensus. When the new code is approved, if it is approved in the form presented to the Commission the people to whom it is directed, that is employers, employees, self employed persons, manufacturers, designed, importers and suppliers will be guided to regard prison officers among those who should be included in the confidentiality net.

The Commission also heard evidence from Dr David W Smith who is a Clinical Microbiologist/ Virologist, Clinical Director, Department of Microbiology and Infectious Diseases at the Western Australian Centre for Pathology and Medical Research. In addition to his verbal evidence he submitted a report (Exhibit S1) in which he described how major blood borne infections can be transmitted. He dealt with the risks of transmission from needlestick injury and made comparisons on the rates of transmission from a needlestick injury between Hepatitis B, Hepatitis C and HIV. He made the point that there is little evidence that health care workers have a higher prevenance of infection than the general population with the exception of some subgroups with frequent exposure to blood. He defined the 'window period' for infection and described the policy of health care institutions concerning universal blood and body substance precautions. In his view there is no requirement to know who is infected apart from in circumstances where there has been a known incident of exposure. This policy was said to protect health staff while maintaining the confidentiality of the person. He opines that:

"It should be able to be applied in the prison setting and produce the same outcomes."

Evidence was also received from Dr Lewis Marshall, Medical Co-ordinator, Communicable Diseases Control Programme for the Health Department of Western Australia. In his role as Medical Director of Communicable Diseases Control Programme and Clinical Assistant in Venereology at Royal Perth Hospital, Dr Marshall has duties which include control of communicable diseases in a particular blood borne viruses. He gave evidence concerning the relative efficiency of the transmission of HIV, Hepatitis B and Hepatitis C. He told the Commission that Hepatitis B is the most infectious agent and is estimated to be some 10 times more infectious than Hepatitis C which in turn is 10 times more infectious than HIV. He said the real risk of transmission is obviously dependent on the number of factors which would need to be determined in each particular case. He advised that the National Health and Medical Research Council and Australian National Council on AIDS have released documents outlining guidelines for the prevention of transmission of infectious diseases. Those guidelines set out that standard precautions should be the primary basis for preventing occupational HIV transmission. Dr Marshall passed some opinions, according to the cross examination apparently not on the basis of his medical experience, concerning occupational health and safety laws. Dr Marshall said of confidentiality the concept was a cornerstone of medical practice and that a patient's medical status is only disclosed to those who need to know so that patient care can be maximised. This meant that the prison medical team would need to know the HIV status of particular prisoners as would the institution's Superintendent so that appropriate arrangements can be made for management of the prisoner. He opined that revealing the status of the prisoner could lead to discrimination and for that prisoner to be denied access to facilities and freedom of movement. Such a prisoner could, according to Dr Marshall, also be subject to violence if other prisoners become aware of his medical status. He was also of the view that breaching confidentiality by revealing the medical status of prisoners is not only discriminatory but provides no protection for the prison officer, in fact it may be a detriment.

The general position of the WAPOU as communicated by its witnesses in these proceeding is that the it recognises and acknowledges that confidentiality is a contentious and central issue. It is the WAPOU position that it was not necessary for prison officers to be fully aware of the precise medical status of a prisoner who may have a blood borne communicable disease. The WAPOU has changed its position of recent times. It does not seek to have information as to the precise medical status that is whether a prisoner has HIV/AIDS or not. All that is necessary is that prison officers who have responsibility for management of a prisoner under the Unit Management regime know that the prisoner has a blood borne communicable diseases. It acknowledges that there has been much debate around the problem of confidentiality particularly concerning prison medical staff providing information to other staff employed in a prison about a prisoners medical condition. The WAPOU recognises the prison medical staff and medical officers have ethical obligations which may not have legal force, but are obligations nevertheless. These obligations are specified in protocols issued by bodies such as the Australian Medical Association in its policy on AIDS published in June 1991.

The WAPOU says that the relationship between a prison officer and a prisoner is different to that of a health care worker and a patient. Health care workers are, for the most part, working with people who are seeking help and assistance and attending the clinic or hospital voluntarily. Prisoners are not in prison voluntarily and suffer the frustration of being isolated from families, emotional turmoil and anger. This can and has in the past, manifest into violent outbursts either towards other prisoners or prisoners officer as authority figure and in some cases self mutilation. Violence outbursts provide the ideal opportunity for the transmission of the disease notwithstanding that there has been training in standard precautions and all the necessary equipment is available. It was argued that there is already disclosure to health care personnel who are treating patients. Health care workers who have direct care of a patient are entitled to look at the medical notes and if that be true, and it is says the WAPOU, the same level of disclosure should be provided to prison officers who under the Prisons Act have a statutory obligation for the welfare of prisoners and who as people have a right to the same level of protection as afforded to health care workers. Currently prison officers are advised of a prisoner's medical conditions such as heart problems, diabetes, epilepsy, Hepatitis B and C and mental disorders. This is done so that a proper and appropriate management strategy can be put in place not only to protect a prisoner but other prisoners and prison officers.

The evidence of Senior Prison Officer Anderton was that in the past at Canning Vale Prison information concerning the medical condition of prisoners was noted on the muster boards. A prisoner with a particular disability or illness had a tag which identified that illness. Those tags included identification of Hepatitis B and Hepatitis C status prisoners. Mr Anderton's further evidence concerned the need for the prison officer to know about the medical status of prisoners to enhance their management under the Unit Care Management system, a system of operation which is practice within the Western Australian prison systems. Under that system the Unit Managers and Prison Officers have direct interaction with prisoners. It is important for the Unit Manager to make proper decisions, for instance, about whether he will double bunk prisoners or provide them with particular assistance by way of extra blankets and other administrative matters. Mr Anderton said that under the proposed protocol, prisoner management of prisoners with a blood borne communicable disease would be the sole responsibility of the Superintendent. According to Mr Anderton such a detailed management role for a Superintendent involving an individual prisoner would be extremely difficult to work given the 24 hour coverage which is provided in the unit, against the availability of the Superintendent who usually works day shift.

The evidence of Mr Anderton was supported by that from Mr Krikstolaitis, a long serving Prison Officer who is a member on the drafting committees established to deal with blood borne communicable diseases. Concerning the confidentiality concept he said that confidential information comes to prison officers in many forms. It includes data such as the type and nature of offence, home addresses, family and other personal information. All of those matters are regarded as confidential. Information on the medical status comes through the computer system so that if a prisoner has diabetes, epilepsy, psychological or heart problems which require constant medication or extra

supervision, that can take place. The prison officer involved in the unit management of a prisoner is aware of medical status so if there a collapse then the right type of first aid can be given. Insofar as confidentially as concerned Mr Krikstolaitis made it clear that prisoner regulations are specific about disclosure, severe penalties can be prescribed for prison officers who breach confidentiality. His evidence was that in his $15^{1}/_{2}$ years as a prison officer there is no example in the Western Australian prison service of an officer being charged for making disclosures.

Concerning the role a superintendent might play under the proposed protocol Mr Krikstolaitis said that there are potential management problems if prisoners with a blood borne communicable disease are only going to be dealt with by the Superintendent. For example Mr Krikstolaitis said if he promised a single cell to a prisoner and if that promise is not fulfilled it would create speculation. Speculation leads to rumour, innuendo and people acting under a basis of ignorance rather than information. He said it is fundamental to the WAPOU position that all prisoners should be treated the same whether they have blood borne communicable diseases or not. If a prison officer has knowledge he can make a decision which is sound because he will not be acting under ignorance.

The WAPOU expressed the concerns that prison officers have on the possibility of infection. The Commission was told that there are currently nine officers awaiting the outcome of blood tests after various incidents in the prisons which have given rise to the fear of contamination. Evidence was given concerning a prisoner who uses blood as a weapon by cutting his mouth and lips and spitting on prison officers. Evidence was also given of a prison officer who had a fear of contamination after being bitten by a prisoner. He had to undergo an 18 month period of blood testing. This occurred soon after he and his wife had a child. He did not pick his child up during that period nor did he have normal relations with his wife for the whole of that time. This caused great stress on his marriage and still caused him personal anguish.

The submissions on behalf of the WAPOU made by Mr Long of Counsel are under four limbs. He first stressed the legal basis for the requirement to identify prisoners with blood borne communicable diseases. He said that prison officers have a duty of care to prisoners and other prison officers. The scope of that duty is determine by a reference to the common law relevant, statutory provisions and policies and procedures that apply within the prison service. Section 12 of the Prisons Act 1981 provides certain statutory duties to be discharged by prison officers. There is a requirement for prison officers to maintain security and report to the Superintendent any matter which may jeopardise the security of the prisoner or the welfare of the prison officers. Prison officers do not escape the duty of care imposed on employees under S20 of the OHSW Act which requires that an employee take responsible care to ensure his own health and safety at work and to avoid effecting the health adversely of others.

There is also a duty for prison authorities to provide a working environment for officers which does not expose them to hazards. Again the OHSW Act is relevant, in particular S19 which sets out the duty of care of an employer. That duty requires the employer to identify hazards, assess the risk including the possibility of injury or harm and then control that risk. It is the WAPOU submission that the presence of prisoners with blood borne communicable diseases does constitute a hazard as it is defined in S3 of the OHSW Act. It is not practical to remove that hazard from the workplace but it is the employers responsibility to provide confidential information so that the risk of injury posed by the hazard is minimised and reduced.

Insofar as the policy framework is concerned; Director General's Rule 3Y sets out the procedures to be applied to the management of prisoners who are suspected or confirmed of having an HIV positive status. The draft policy was in fact intended to apply to prisoners with a range of blood borne communicable diseases. That draft policy was approved by members of the consultative committee with the exception of those from the health sector who drafted their own policy. The terms of the draft Rule 3Y do not offend against existing laws.

Mr Long submitted that there are operational reasons that support the WAPOU application. Prison officers in Western Australia are assigned management responsibilities under the unit management system. Even though the system does not operate as fully as was intended, the concept is still in place so that a unit management team has total responsibility for custody and care for prisoners under their control. The evidence is that unit managers have been involved in the formulation and implementation of appropriate case management strategies from prisoners. From that view point it is desirable that they be provided with information identifying prisoners with blood borne communicable diseases to allow them to more properly execute day to day management. There are a number of examples of prison behaviour which make clear the desirability of providing the information. Operationally it is not appropriate for confidential information to be the main preserve of superintendents who are only physically present in the prison for 23% of the working time in any year. Good operational practice requires confidential information be provided because it helps effective implementation of unit management by ensuring prison officer autonomy. It removes the perception that prison officers cannot be trusted with sensitive and confidential information and it will allow for the development of more appropriate protocols which acknowledge the operational need for prison officers to have access to confidential information.

Standard precautions they do not eliminate the risk posed by prisoners with blood borne communicable diseases. In some cases it may not be appropriate for prison officers to apply standard precautions in respect of all prisoners. On the other hand depending on circumstance it may be appropriate for precautions to be imposed which are additional to standard.

Insofar as confidentiality is concerned, R 22 of the Prison's Regulations 1982 prohibits a prison officer making any comment concerning any prison officer, prison or prisoner or using any information gained or conveyed to him as part of his prison service except in the discharge of his duties or with written approval. A breach of that section is a disciplinary offence which could lead to dismissal. The operational requirements of Western Australian prisons have historically required prison officers be provided with access to confidential information about prisoners including medical status. Notwithstanding this, there has been no instance of a prison officer being charged with wrongfully disclosing that information. It is the WAPOU submission that in the context of the prison environment it is not appropriate to view a prisoner with a blood borne communicable disease as a patient. The ethical considerations that may arise for medical practitioners with a duty of care towards a patient do not arise in the prison setting. In any event there is no legal impediment which has prevented or would prevent confidential information being released to prison employees other than medical practitioners.

The Respondents position in this case is that the matter in dispute is the question of whether or not by disclosing to Unit Managers and certain prison officers within the prison system that prisoners under their control have blood borne communicable diseases will be enhancing the safety of those officers. The Respondents position is that the evidence is clear that such disclosures can in no way be seen as assisting the safety of prison officers and once that is established all the other arguments fall away. The issues relating to unit management and welfare do not have substance and any event there is doubt whether the Commissions is jurisdictionally competent to deal with those matters because they may not address industrial disputes between employers on the one hand and employees on the other.

There is difficulty in identifying with accuracy those who do have blood borne communicable diseases because of window period for HIV and Hepatitis C and the turnover of people through the prison itself. Therefore the starting point to approaching the question of a safe system of work and minimising the risk of exposure to the diseases is to adopt standard precautions. Imbedded in the concept of standard precautions is the fundamental principle that every person within the prison system must be treated as being a potential carrier of a blood borne communicable disease. If that is done there will be a minimisation of the risk of exposure. On the evidence both from witness for the Respondent and the

WAPOU there are no difficulties in applying standard precautions. The key, according to Mr Sefton, is education because unless prison officers are properly educated and have a real understanding of standard precautions they will misconceive the risks and will not act appropriately when exposed to blood or bodily fluids from a prisoner.

Mr Sefton said that the WAPOU case appeared to rely on the general belief of forewarned is forearmed but the case falls because it does not address how, having the knowledge of the actual HIV or Hepatitis status will enable prison officers to take any other precautions or act in someway differently to minimise a risk. That is because as a matter of logic it must be concluded that standard precautions is the best system to minimise risk to both officers and prisoners. Mr Sefton dismissed the argument of the WAPOU concerning violence and blood exchange resulting in those circumstances on the basis that if the violence is spontaneous nothing can be done in advance to minimise the effect. In any event there are a range of different ways in which officers should respond in those circumstances.

Mr Sefton reviewed the history of policy development, noting that it was clear that the application of the system under Rule 3Q was unlawfully discriminatory. Rule 3Y was never accepted because the prison health services thought there were some deficiencies in it. This lead to further consideration of the health perspective and finally the new policy was adopted. That policy is an appropriate one and the level of disclosure which is permissible under it is appropriate in the context in the prison environment. The 3Y policy permitted a greater level of disclosure to prison officers which is now not appropriate particularly in the light of the expert views about transmission of this group of diseases. It is sufficient that the superintendent is provided with information regarding the medical status of a prisoner to allow that person to be dealt with in conjunction with the medical services section. It is on that view a conjoint decision with health input in terms of the implication of the persons medical status and behaviour for their management, as well as a senior official within the prison finally deciding what is the appropriate management for the person. There is justification and sound argument why the superintendent might need to know. The policy has the benefit of minimising the prospects that HIV status information is disseminated willy nilly within the prison system. The MOJ rejected the argument that a Unit Manager needs to know the information to satisfy the welfare needs. That is far fetched and an attempt to broaden the scope of the application without any evidence to substantiate it. If a prisoner with a blood borne communicable disease needed extra administration such as bedding, pillows for instance, that can be dealt with by the superintendent issuing a direction. The notion that unit managers need the information to properly manage the prisoner is a smoke screen for the true desire which was that officers thought that they needed the information for their own safety.

It was submitted that there had been significant change from the 1980's with the introduction of unit management. This had changed the role of the prison officer from a traditional turnkey role by ensuring they accept more responsibility in terms of daily dealing with prisoners. It was conceded that prison officers do interact with prisoners and that is encouraged, but it was wrong to extend that proposition to one of total responsibility which was the underpinning philosophy behind unit management when it was adopted in the late 1980's. There has been significant difficulties with the concept over past years, not the least being the change to twelve hour shifts. It was submitted that in circumstances where above normal precautions needed to be taken the superintendent would be able to instruct officers accordingly. That would mean they would receive information in the context of how they need to respond to deal with a particular prisoner. They do not need to know what the medical status of the prisoner is in those circumstances and it should not be up to a prison officer to judge how they do or do not treat a person differently. This of itself might lead to a situation which would constitute a discrimination itself whether lawful or unlawful. This could expose the Respondent to further actions under the anti-discrimination legislation. The discrimination might well be inadvertent but the effect on the Respondent would be the same. Mr Sefton addressed the decisions of the EOC and HREOC. I have not summarised his argument on those decisions as I have drawn from his submissions in constructing the narrative in the first part of these Reasons.

Mr Sefton attacked the evidence given by Mr Bryant on the basis that he was the worker representative on Occupational Health Safety and Welfare Council and supported the position of the WAPOU, and was not an expert. Mr Sefton excused Dr Dare's complicity with the shape of the final draft on the basis that one understands his position as chairman in trying to achieve consensus. Dr Dare's evidence before the Commission was clearly different. He considered prison officers did not need to know the information. His evidence should be accepted and no weight should be given to the worksafe proposed code of practice. Mr Sefton also attacked the evidence of Mr Anderton concerning the sticker system for identification of illnesses. He told the Commission that the evidence of Mr Simpson should be accepted in preference as should the evidence of Mr Vaughan as a Senior Prisoner Administrator that prison officers are likely to be better protected by implementing a system that does not involve general dissemination of medical information particularly in the way contemplated by the WAPOU.

What should be at focus in the case is the relationship between employer and employee particularly in respect of whether the employee would be adversely affected in the relationship if the medical information was not given. It is only if there potential adverse effect to their health through not receiving the information that an industrial dispute arises. There has been a lot of issues discussed during the hearing about prison welfare which are not industrial matters and in any event have no substance on the key point of safety. According to Mr Sefton the expert view at the current time is that the system proposed by the MOJ is appropriate and there is no right whatsoever to a greater disclosure.

To a large extent the evidence of the Respondents from medical sources relies upon the proposition that there can be a legitimate comparison between the way that persons with blood borne communicable diseases are handled in hospitals and the prison environment. In addition, in his evidence Mr Vaughan offered the view that prisons are microcosms of society. This was in the context of the possibility of transmission of confidential information by gossip and chit-chat. In response to a question from the Commission concerning the nature of populations in prisons, that is they are not normal at all, they are special places, Mr Vaughan did not fully recant his observation.

Neither of the parties lead evidence to the Commission during the proceedings concerning the demography of the prison population. In analysing the data before me I have decided that I should explore whether there may be a difference between the prison population and a population which might be found in a hospital. For that purpose I conducted research on the matter. Having decided to do, pursuant to S26(3) of the Act, I advised the parties that I proposed to take into account the matter of information which was not raised before me during the hearing. I advised them that the information was contained in the following documents:

> Crime and Justice statistics for Western Westralia: 1995, *Ferrante & Loh*, Statistical Report (1995): 1 January 1995—31 December 1995 published December 1996.
>
> Ministry of Justice Statistical Report 1993—1994.
>
> Criminological/Correctional Futures, a paper presented to the National Conference on the Role of Employment, Education and Training in the Criminal Justice System, 9-12 February 1992, *McCotter, D.*
>
> Fax transmission of 30 January 1997 from Sex Offender Treatment Unit (copy supplied to the parties).

By letter dated 30 January 1997 the Commission invited the parties to make submissions arising from their perusal of the documents. Those submissions were required to be filed by 5.00pm on 31 January 1997. As an assistance I also advised them that my interest in the documents related to the description of the prison population. Both parties advised that they did not wish to make any submissions.

In a paper titled Criminological/Correctional Future delivered to the National Conference on the Role of

Employment, Education and Training in the Criminal Justice System in February 1992 it is noted that:

> 79% of prisoners have less than 3 years of secondary schooling;
>
> 65% of offenders are characterized by significant substance abuse problems;
>
> 62% of offenders lack the basic skills necessary for independent living;
>
> 22% of all offenders are convicted of sex offences.
>
> These statistics clearly show that prisons can be a bottomless pit as far a s programme resources are concerned, a majority requiring education, skills development training and treatment. By the time the offender arrives the effects of social and/or educational deprivation are well entrenched. Furthermore, the worst place to try and address the social and educational needs of an individual is in a prison.

In the Ministry of Justice Statistical Report 1993-1994 in the table Census Of Prisoners On The Night Of 30/06/94, By Prison Age, Sex And Aboriginality and the Census Of Prisoners On The Night Of 30 June 1994 Showing Educational Qualifications, the following critical figures can be calculated.

> 63% of prisoners are aged between 20 and 34
>
> 95% of prisoners are male
>
> 32% prisoners are aboriginal
>
> 75% of prisoners have less than 3 years secondary education
>
> 40% of prisoners are unskilled

The Crime and Justice Statistics for 1995 contain information relating to the number of sex offences. This does not give a true impression of the number of sex offenders that are concerned. Information concerning the number of offenders was obtained from the Sex Offenders Treatment Unit, (see faxed letter dated 30 January 1997). According to the information received by the Commission from the Unit there are approximately 23% of prisoners in jails who have been convicted of offences of a sexual nature. The number of convicted sex offenders has been rising over the past decade from a level of approximately 11%.

It is against the background of all the evidence that I have summarised above and additional information collected post the hearing that I make my analysis of the matters for determination.

Mr Sefton mentioned, almost in passing, that there may be some jurisdictional difficulties with the Commission dealing with some of the information before it. He qualified the suggestion of jurisdictional difficulty to say that if safety issues were involved clearly there was no jurisdictional impediment.

The Commission in Court Session dealt with jurisdictional issues in Amalgamated Metal Workers and Shipwrights Union of Western Australia and Others, *v.* Robe River Iron Associates (1987) 67WAIG 2 @ 24. In my Reasons for Decision I reviewed the relevant authorities as they were then. In essence there is an acknowledged right of an employer to manage and regulate his own business subject to the protection of his employees from injustice or unreasonable demands. In the context of this case the suggested jurisdictional impediment falls away if employees have been subject to injustice or unreasonable demands. It has been held in many cases so it is trite to say that an issue relating to safety can give rise to injustice occurs or unreasonable demands are made by an employer.

The Respondents argued that there is a diminishing importance in prison management of the unit management and case management approaches. I accept the evidence that care management has diminished considerably from the time of its introduction in the 1980's. The evidence, which I accept, is that Unit Management is still the model used although it may be reviewed in the future.

The Commission heard evidence from Mr Bryant and Dr Dare. That evidence was supported by a document which contained an extant Code of Practice relating to Hepatitis B and HIV/AIDS in the workplace. The Code of Practice was made in accordance with Section 57 of the OHSW Act. That document is subject to review at the current time however it is clear that the Code of Practice and its successor deal with practices that have been used to handle hazards in the workplace which arise from the presence the blood borne communicable diseases, Hepatitis B and HIV/AIDS. Under the OHSW Act by S19 an employer is required to minimise hazards. It is consistent with this provision that the code provides that employers must inform employees about any hazard in the workplace and that some employees who are identified as at risk may need to be included in the confidentiality net. There was evidence given to the Commission that the replacement Code would include prison officers within the confidentiality net. That Dr Dare says that he only went along with the provisions in the new code for extension of the confidentiality net on the basis that he was trying to achieve consensus diminishes the value of his evidence in this case. His evidence here may be convenient to the Respondents argument but the reality is that a code which will in due course be issued in accordance with Section 57 of the OHSW Act has in its draft form provisions which identify blood borne communicable diseases as hazards and identify prison officers among a range of employees who could be within the confidentiality net. From the evidence the medical practitioners themselves, the evidence is overwhelming that blood borne communicable diseases in the workplace are a hazard. Their presence therefore give rise to safety concerns and on the applicable authorities give rise to jurisdiction of the Commission to deal with the matter.

I have related the history of the various protocols that have been used in the WA prison service to handle blood borne communicable disease. It is clear that HREOC has found that Rule 3Y is contrary to the DD Act (Cth). There is no doubt that the Respondents were in breach of the law when prisoners with HIV status were managed in a segregated regime. It should also be said that the WAPOU first opposed the integration of HIV/AIDS status prisoners to the prison population but at the time they were at ad idem with their employers. Both the Respondents and the WAPOU have changed their views and accept that there must be integration of prisoners with this illness. Integration must be taken as a starting point in this case.

The Commission was assisted by the evidence from the senior medical officers concerning the identification of the major blood borne infection, the way that the greatest risk of transmission occurs, the rates of transmission, the difficulties with identification of persons with HIV or Hepatitis C caused by the use of antibody test and the dangers of the window period. In short what was being said was that not everyone who has these infections can be identified so it is safer to regard everyone as potentially infectious. Transmission generally occurs from people not known to be infected. A high standard of practice is maintained for patients in hospitals though use of standard precautions to minimise risk of transmission. Identification of infected individuals may lead to complacency about those who test negative while they may be in a window period. All of the medical practitioners recommended standard precautions which would protect against avoidable exposure to blood or body fluids independent of whether the individual is known to be infected or not.

Each of the medical witnesses offered an opinion concerning whether, in view of the use of standard precautions, there is a need for prison officers to know the medical status of prisoners. It is the doctors view that the only circumstances which the information would be helpful is when there has been a known incident of exposure or another unusual circumstance. The overall medical evidence is that standard precautions should be used and that knowledge of the medical status of particular persons may act against the interest of proper infection control and therefore prison officers should not be told.

The medical evidence raised the question of medical confidentiality. If one reviews the evidence this was an issue that gave rise to difficulties with drafting of the new Rule 3Y. It was apparently the motive behind the prison medical services being tardy in their involvement with the drafting of Rule 3Y. Of course prisoner management would fall into great difficulty if some prison manager did not know the medical status of prisoners. Therefore the protocols which were eventually signed by Minister Minson provided that the superintendent of the prison should be advised of the medical status of prisoners and that the superintendent would accept the responsibility for dealing with that prisoner.

The WAPOU attacked the notion that the superintendent could effectively discharge these duties. They pointed out that the superintendent is available for some 23% of the time. I accept the evidence of the witness on behalf of the WAPOU that if the unit management concept is to be pursued then it is essential that prison officers know the medical status of a prisoner allocated to their care under the unit management scheme. At the moment they would know if a prisoner has a heart complaint, diabetes, hearing loss or scabies for example. These are all conditions which are subject to medical confidentiality. This information has been disclosed to prison officers for as many years as prisons have been operated in this state. It was obviously contemplated by the Prisons Act 1981 that confidential information about prisoners would come into possession of prison officers because there are provisions in that Act in S28 to ensure that confidentiality is kept. I accept the evidence that there has been no prison officer charged with a breach of duties of confidentiality imposed under the Act. Not one instance of a breach by a prison officer was brought to the attention of the Commission during the preceding. Confidentiality regarding prisoners details such as his home address, his family contact numbers, his offences are known to prison officers and all of them are confidential. It fractures logic to say that the cannons medical confidentiality are kept and there can be disclosure to a superintendent of the medical status of prisoners on the one hand but there cannot be to a prison officer on other when both are bound by the same confidentiality obligations under the Prisons Act.

There was reference in the proceedings to stigmatisation of persons with HIV and the need of confidentiality because of this. Notwithstanding my comments concerning confidentiality generally, there is some force in the argument. The drafters of Rule 3Y were cognisant of the potential problem and the protocol was drafted to cover blood borne communicable disease in general. I agree that there is no need for a prison officer to know the precise medical classification of a prisoner who suffers from either Hepatitis B, Hepatitis C or HIV. It is sufficient that the prison officer knows that there is a general category of illness known as a blood borne communicable disease. Together with the confidentiality obligations this should diminish the potential for stigmatisation.

I reject the argument that if a prison officer knows that a prisoner has a blood borne communicable disease that prison officer will somehow be complacent in applying standard precautions. According to the evidence of Mr Krikstolaitis there are training programmes on the blood borne communicable diseases which include information concerning antibody testing and the potential dangers during the window period.

Prison officers are aware of the make up of the prison population and as of nature they are careful in the way they deal with prisoners. They are careful, according to the evidence, because a prison population is not the same as a population in a hospital and it is here that there is a major flaw in the argument of the Respondents. As indicated previously in these Reasons the prison population is in statistical terms different to the normal population. There are mainly young men at the height of their sexual activity. The majority of them are substance abusers with low educational levels. Over 23% of them are in prison for sex offences. It defies all logic to compare the population of a prison with that in a public hospital. Except on very rare occasions health workers do not meet patients with the same potential for dysfunction. Evidence was given to the Commission of a prisoner mutilating his mouth and attempting to spit into the eyes of prison officers. There are eight prison officers waiting the outcome of tests in circumstance where they have been exposed to potential infection. There is evidence before the Commission of the traumatic effects on a prison officer and his family while he waited for results of testing after he had been bitten by a prisoner. As there is of sexual activity both consensual and otherwise. Witnesses also told the Commission of the continuing battle against drug use in prisons..

In addition, prisoners do not passively accept incarceration. During 1993/94, 2185 charges were laid against 952 distinct persons in prison. Violence occurs in prisons, both prisoners and prison officers are assaulted. Prison is life much different to the normal community. But the expert medical opinion gives no credence to this at all. It is flawed logic not to . In my view the difference must be given weight.

The suffering that has been endured by HIV positive prisoners as a result of the segregation regime in WA prisons is regrettable. That is a discrimination which the law does not tolerate. It would be wrong though, if in the remedy to that discrimination there was new discrimination on prison officers. In an address in his capacity as Commissioner of the World Health Organisation Global Commission on AIDS in 1990, Justice of the High Court Michael Kirby said:

> *"Death, as they use to say in the old road safety advertisements, is so permanent. The infection of any prison officer by an isolated act of a prisoner is most unpalatable. It is criminal conduct and morally outrageous. The infection of a person who is in the custody of society, because that person does not have access to ready means of self protection and because society preferred to turn the other way, is just as unpalatable. As a community we must take all proper steps to protect prison officers and prisoners alike. By protecting them we protect society."*

There is need for balance in dealing with discrimination in our community. That balance can best be achieved by granting the application. The arguments on the basis of safety and prisoner management have been powerfully made out by the WAPOU. For the reasons I have set out above Orders will issue which will require the MOJ provide information identifying the diagnostic status of any prisoner with a blood borne communicable disease to Unit Managers. The information will not identify the specific disease. Unit Managers will be authorised to disclose the information to prison officers within the Unit subject to the information being given solely for providing for the welfare of the prisoner or management control and security of the prison in which the prisoner is being held.

Appearances: Mr J Long of counsel appeared on behalf of the Applicant.

Mr A Sefton of counsel appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Prison Officers' Union of Workers

and

The Hon. Attorney General (First Respondent)
and Ministry of Justice (Second Respondent)

No. CR 330 of 1996.

COMMISSIONER J. F. GREGOR.

5 February 1997.

Order.

HAVING heard Mr J. Long of Counsel on behalf of the applicant and Mr A. Sefton of Counsel on behalf of the respondents, the Commission, pursuant to the powers vested in it under the Industrial Relations Act, 1979, hereby orders:

(1) THAT the Ministry of Justice provide to a Unit Manager information identifying the diagnostic status of any prisoner with a blood borne communicable disease who is allocated to the Unit; and

(2) THAT Unit Managers be authorised to disclose the information to prison officers within the Unit subject to the information being given solely for the purpose of providing for the welfare of the prisoner or the management, control and security of the prison in which the prisoner is being held; and

(3) THAT Orders 1 and 2 take effect on the 19th February 1997.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

CORRECTIONS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy,

Timberyards, Sawmills and Woodworkers Union of Australia, West Australian Branch

and

Fremantle Hospital and Others.

No. 1153 of 1996.

Engine Drivers (Government) Award 1983.

No. A 5 of 1983.

CHIEF COMMISSIONER W.S. COLEMAN.

3 February 1997.

Correcting Order.

WHEREAS an error occurrred in the drafting of the above Order dated 22 October, 1996 published in the Western Australian Industrial Gazette, Volume 76, Part 1 at page 1456 and by consent of the parties the following amendments are made:

Clause 24.—Wages—Instruction B.: Insert the following in lieu:

(a) The weekly rates of wages payable to employees defined as such shall be—

	Base Rate	Safety Net Adjustments	Total Rate	%
	$	$	$	
Hospital Plant Operator—Level 1 (C12a)	380.80	24.00	404.80	91.55
Hospital Plant Operator—Level 2 (C11a)	399.20	24.00	423.20	95.77
Hospital Plant Operator—Level 3 (C10)	417.20	24.00	441.20	100.00
Hospital Plant Operator—Level 4 (C9a)	449.40	24.00	473.40	107.33

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Frances Catherine Ladner

and

The Rug Shoppe.

No. 1613 of 1996.

COMMISSIONER P E SCOTT.

12 February 1997.

Reasons for Decision.

THE COMMISSIONER: This is an application by Frances Catherine Ladner for the extension of the time in which to file an application pursuant to Section 29 (1)(b)(i) of the Industrial Relations Act 1979 ("the Act") that she has been harshly, oppressively or unfairly dismissed from her employment. The application is made pursuant to Section 29(3) of the Act. This states:

"(3) The Commission may, on the application of the employee, extend the time within which a referral may be made by an employee under subsection (1) (b) (i) if the Commission is satisfied that—

(a) the dismissal is, at the time of the application under this subsection, the subject of an application under section 170EA of the Commonwealth Act; and

(b) the extension of time is necessary to ensure a remedy in respect of the dismissal is available under this Act."

The terms of Subsection (3) make it clear that the decision regarding the extension of time is a discretionary one.

The Commission has convened a conference and has received written submissions from the parties. Upon examining the matter, the Commission advised the parties that it wished to provide them with an opportunity to make submissions as to whether the date of lodgement of the application pursuant to the Industrial Relations Act 1988 ("the Commonwealth Act") created any impediment in this matter. The parties were advised to make their submissions, if any, no later than Friday 7 February 1997. The Applicant submitted, in essence, that she had received no written notice of termination of employment, that the time limit set out in the Commonwealth Act for the filing of the application there had not expired and referred to the majority judgement in Liddell and Another *v.* Lembke and Another (1995 127 ALR 342 at 346). On this basis it says that there is no such time limit applicable under the Commonwealth Act. The Respondent made no submission in that regard, although in its original submission it says that the validity of the application under the Commonwealth Act "is a matter of interpretation and assessment by for the relevant Judicial Registrar in the Federal proceedings."

For this Commission to determine a claim for an extension of time to file the application in this jurisdiction under the terms set out in Section 29(3), the Commission needs to make that assessment. The circumstances of this matter are that the termination of employment took place on 10 May 1996. No written notice of termination has issued. Application U61293 of 1996 was filed with the Australian Industrial Relations Commission on 11 September 1996. I am satisfied on the basis of the decision in Liddell and Lembke (op cit) that there is a valid application under section 170EA of the Commonwealth Act.

The Respondent has raised the issue of the Commission's discretion to grant the extension of time and says that the lengthy delay in the Applicant filing the application should be considered. This is noted, however, this is a matter appropriate for consideration in the substantive matter of the dismissal, rather than in the application to extend time.

The Respondent also says that the maintenance of proceedings in two jurisdictions is an abuse of process. This may be so generally speaking, however, the Act requires the existence of the application in the federal jurisdiction to enable the extension to be granted. There is nothing to suggest that the Applicant will pursue both applications. On the contrary, the Applicant says that it is not her "intention to pursue the claim in the Federal jurisdiction, unless this application for an extension of time in which to file is unsuccessful". If the Applicant chose to pursue applications in both jurisdictions then an abuse of process application may be considered, also at the hearing of the substantive unfair dismissal case.

The Respondent also argues that if the application for extension is not granted then the Applicant will not be denied a remedy in respect to her claim of unfair dismissal, that a remedy is available under the Commonwealth Act. It is true that should the extension not be granted then the applicant would be denied a remedy under this Act. The terms of Section 29(3) refer to providing a remedy under the Industrial Relations Act 1979, not simply denial of any remedy. Therefore, an extension is necessary to ensure such a remedy is available under the Industrial Relations Act 1979.

I have considered the submissions by the parties and also the terms of Section 29(3) of the Act. The two requirements pursuant to Section 29(3) which the Commission must consider before granting an application have been met and the other matters raised by the Respondent do not provide sufficient reason for the Commission to otherwise exercise the discretion provided and to reject the application. An order for the extension of time shall be issued.

APPEARANCES: Mr M Jenson on behalf of the Applicant.

Mr J Fiocco (of Counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Frances Catherine Ladner

and

The Rug Shoppe.

No. 1613 of 1996.

COMMISSIONER P E SCOTT.

26 February 1997.

Order.

HAVING received written submissions from Mr M Jenson on behalf of the Applicant and Mr J Fiocco (of Counsel) on behalf of the Respondent the Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979 hereby orders—

THAT the time for filing of application No. 1612 of 1996 be extended to and including the 7th day of November 1996.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Day

and

Karata Holdings Pty Ltd.

No. 145 of 1997.

COMMISSIONER A.R. BEECH.

20 February 1997.

Order.

HAVING heard Mr R.W. Clohessy on behalf of the applicant and Mr B.S. Hanbury on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders:

THAT the time within which Mr David Day may refer a matter under s.29(1)(b)(i) of the Act be extended pursuant to s.29(3) to the 23rd January 1997.

(Sgd.) A. R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James A Capewell

and

Cadbury Schweppes Pty Ltd

No. 293 of 1997.

COMMISSIONER S. A. CAWLEY.

21 February 1997.

Reasons for Decision.

THE COMMISSIONER: This is an application for discovery of documents in relation to a claim of unfair dismissal filed by James A Capewell against Cadbury Schweppes Pty Ltd (Matter No. 29 of 1996). The schedule to it describes the documents as follows —

1. that part of the transcript of evidence of Les Guest in the hearing of Bob Watts' claim against the respondent in respect of Watts' dismissal; and
2. all documents for the years 1994-6 inclusive in connection with the respondent's account with the Carlisle Retravision store being statements of account and invoices and documents showing what goods were purchased during those years and the person and place to whom they were delivered;
3. all documents in connection with the requisitioning of cheques for payment of accounts by the respondent's account managers for the years 1994-6 inclusive including that which Watts was instructed to alter by the respondent's manager Les Guest in the second half of 1995.

The respondent opposes the application on grounds which largely go to relevance and oppression.

After early submissions the last class of documents was not pursued and that part of the application effectively lapsed.

Cause for the discovery of transcript was not sufficiently made out and, in any event, it is likely it is a public record. The order sought will not issue.

So far as the application for the second class of documents is concerned, I have concluded as follows.

Discovery of the documents sought which originated within the respondent's business after the termination of the applicant's employment on 20 December 1995 will not be ordered as no sufficient relevance to the decision to dismiss has been established. Further an order for discovery of all documents "in connection with" an account will not be made on the basis it likely would be too onerous. However I consider that there is sufficient cause to order discovery of specific documents involving the purchase of goods by the respondent from the store concerned and the delivery of any good/s so purchased and will allow for the period 1 January 1994 to 20 December 1995 in that.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Capewell

and

Cadbury Schweppes Pty Ltd

No. 293 of 1997.

COMMISSIONER S. A. CAWLEY.

21 February 1997.

Interlocutory Order.

HAVING heard Mr D Schapper on behalf of the applicant and Mr J Sher and with him Ms S Peters on behalf of the respondent, on this application for the production of documents in relation to Matter No. 29 of 1996;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the respondent produce to the applicant within seven (7) days any record of the following in its possession:

(a) Invoice/s or account/s payable for any good/s purchased by it from Carlisle Retravision at any time in the period 1 January 1994 to 20 December 1996.

(b) Any record/s of any person or entity and the location of such person or entity to which any good pur-

chased by the respondent from Carlisle Retravision in the period 1 January 1994 to 20 December 1995 was delivered.

(Sgd.) S. A. CAWLEY,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David W. White
and
Satelite Investments Pty Ltd t/as Perth Heat
No. 319 of 1997.

COMMISSIONER C.B. PARKS.

18 February 1997.

Order.

WHEREAS on 12 February 1997 an application was filed in the Commission requesting that the time for the filing of an answer in application no. 320 of 1997 be shortened; and

WHEREAS the Commission considered the content of the application, and that no. 320 of 1997, and made enquiries of the respondent;

AND WHEREAS the agent for the respondent informed the Commission that the respondent objects to the application for shortened time;

NOW THEREFORE the Commission, being satisfied;

THAT the alleged dismissal occurred on 21 January 1997 yet the applicant did not file application 320 of 1997 until 12 February 1997 and therefore did not act with expedition regarding the matter. Hence any difficulty caused by the length of time between the filing of the application (No.320 of 1997), and the conclusion of the baseball season, is of the applicant's own making; and

THAT although the baseball season concludes in February the particulars provided in support of the application provide no insight as to the relevance thereof and none is perceived by the Commission; and

THAT notwithstanding the team "...may be sold to a new owner.." in the near future, the remedies sought in application No. 320 of 1997 do not include reinstatement with the named respondent, but are for compensation and/or benefits which have not been allowed under the contract of employment. These remedies are unaffected by the sale of the team to another party;

and pursuant to the power 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.

JOINDER/CONCURRENCE OF PARTIES— Application for—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Innaloo Sportsmens Club (Inc) & Other
and
The Australian Workers' Union, West Australian Branch, Industrial Union of Workers
No. 196 of 1997.

COMMISSIONER J F GREGOR.

4 March 1997.

Order.

HAVING heard Mr C Keys on behalf of the Innaloo Sportsmens Club (Inc) and the Lakes Golf Links (WA) Pty Ltd trading as the Glen Iris Golf Course and Mr M Lourey on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT Innaloo Sportsmens Club (Inc) and the Lakes Golf Links (WA) Pty Ltd trading as the Glen Iris Golf Course be joined as parties to Application No. 1117 of 1996.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

NOTICES— Appointments—

THE INDUSTRIAL RELATIONS ACT 1979.

I, the undersigned, the HONOURABLE DAVID KINGSLEY MALCOLM AC, Chief Justice of Western Australia, in exercise of the powers conferred upon me by s.85(6) of the *Industrial Relations Act 1979,* DO HEREBY NOMINATE the HONOURABLE ROBERT JOHN McARTHUR ANDERSON, a Judge of the Supreme Court of Western Australia to be an Acting Deputy Presiding Judge of the Western Australian Industrial Appeal Court from 19 February to 28 February 1997 or until the completion of the hearing and determination of any proceedings he may be participating in at the expiration of that period.

As witness my hand this 19th day of February 1997.

(Sgd.) DAVID K. MALCOLM,
[L.S.] Chief Justice of Western Australia.