Western Australian

Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 5 WEDNESDAY, 28TH MAY, 1997 Vol. 77—Part 1

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

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—
Appeal against decision of Full Bench—

JURISDICTION : WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

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

HEARD : 4 FEBRUARY 1997

DELIVERED : 2 APRIL 1997

FILE NO/S : APPEAL IAC 19 of 1996

BETWEEN : ALLAN GRAHAM SHUTTLETON
Appellant

AND

JOHN CAIN
Respondent.

JUDGMENT—

ANDERSON J (Acting Deputy Presiding Judge): This appeal was heard on 4 February of this year by a Court constituted by myself and Scott and Parker JJ. For the reasons which I now publish I would allow the appeal.

SCOTT J: I would also allow the appeal and I publish my reasons.

PARKER J: For reasons which I now publish, I too would allow the appeal.

Catchwords:

Industrial law—Validity of State law—Inconsistency with Commonwealth law—State law proscribing conduct of union officials—Prosecution of official of federal union—Whether State law inconsistent with Industrial *Relations Act 1988 (Cwth)—Industrial Relations Act 1979 (WA)*, s96E(1)(b)—*Australian Constitution* s109.

Representation:

Counsel:

Appellant : Mr R E Cock & Mr C Pruiti

Respondent : Mr P W Johnston & Mr M D Cuomo

Solicitors:

Appellant : State Crown Solicitor

Respondent : Mark D Cuomo

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

Ansett Transport Industries (Operations) Pty Ltd v Wardley (1980) 142 CLR 237

Australian Broadcasting Commission v Industrial Court (SA) (1976) 138 CLR 399

Botany Municipal Council v Federal Airport Authority (1992) 175 CLR 453

Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466

Ex parte McLean (1930) 43 CLR 472

Metal Trades Industry Association v Amalgamated Metal Workers' and Shipwrights' Union (1983) 152 CLR 632

Miller v Miller (1978) 141 CLR 269

O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565

P v P (1994) 181 CLR 583

R v Clarkson; ex parte General Motors Holden's Pty Limited (1975) 134 CLR 56

T A Robinson & Sons Pty Ltd v Haylor (1957) 97 CLR 177

Sharpe v Goodhew (1990) 33 IR 238

Wenn v Attorney-General (Victoria) (1948) 77 CLR 84

Williams v Hursey (1959) 103 CLR 30

Case(s) also cited:

Alexandra Private Geriatric Hospital Pty Ltd v Commonwealth (1987) 162 CLR 271

Australian Boot Trade Employees' Federation v Whybrow & Co (1910) 11 CLR 311

Bailey v Krantz (1985) 13 IR 326

Beckwith v R (1976) 135 CLR 569

Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth) (1981) 147 CLR 297

Council of the Municipality of Botany v Federal Airports Corporation (1992) 175 CLR 453

Grannall v Marrickville Margarine Pty Ltd (1955) 93 CLR 55

Jumbunna Coal Mine NL v The Victorian Coal Miners' Association (1908) 6 CLR 309

R v Credit Tribunal, ex parte General Motors Acceptance Corporation (1977) 137 CLR 545

Re McJannet; Ex parte Minister for Employment, Training and Industrial Relations for Queensland (1995) 132 ALR 198

Sharpe v Goodhew (1990) 33 IR 238

University of Wollongong v Metwally (1984) 158 CLR 447

Victoria v Commonwealth (1937) 58 CLR 618

Viskauskis v Niland (1983) 153 CLR 280

The Queen v Credit Tribunal; Ex parte General Motors Acceptance Corporation, Australia (1977) 137 CLR 545

The Queen v Loewenthal; Ex parte Blacklock (1974) 131 CLR 338

The Queen v Winneke; Ex parte Gallagher (1982) 152 CLR 211

ANDERSON J:

This is an appeal from a decision of the Full Bench of the Industrial Relations Commission, given on 4 November 1996, whereby the Full Bench allowed appeals against the decisions of two Industrial Magistrates convicting the respondent of certain industrial offences.

The appellant is an industrial inspector appointed under the *Industrial Relations Act*, and he brought several complaints against the respondent of offences under s96E(1)(b) of the Act. So far as relevant, that section provides:

> "96E(1) A person, including an organisation of employees, must not threaten that
>
> (a) ...
>
> (b) the free and lawful exercise of a second person's trade, profession or occupation will or may be interfered with
>
> by reason of the circumstance that the second person or a third person is not a member of an organisation of employees."

It was alleged that the respondent, in his capacity as an officer of the Transport Workers Union, threatened two non-members of the Union that because they were not members of the Union they would not be permitted to do the work they were then doing, and threatened their respective employers that bans would be placed on their operations if they continued to employ the men in that work. It may be accepted for present purposes that this was either a recruiting tactic or part of a wider strategy to get rid of non-union labour from these work sites.

There were six complaints in all, heard by two separate Magistrates. One complaint was dismissed. In respect of each of the other complaints the Magistrates imposed fines of $400 and made substantial costs orders. The respondent appealed to the Full Bench against each conviction and all of the appeals were heard together. Three grounds of appeal were argued. The only one which concerns this Court is ground 3 as follows:

> "3..... The learned Magistrate erred in law and in fact in not holding,
>
> (a) that any threat made by the [respondent] related to membership of the Transport Workers Union of Australia ("the Federal Union") an organisation registered pursuant to the *Industrial Relations Act 1988*, an Act of the Federal Parliament ("the Federal Act"); and
>
> (b) that insofar as the State Act sought to regulate the recruitment of membership to the Federal Union then the State Act is invalid to that extent as it is inconsistent with the Federal Act which covers the field of the regulation of recruitment of members of Unions registered under the Federal Act."

In short, it was contended before the Full Bench that s96E(1)(b) was invalid for inconsistency with a Commonwealth statute, namely, the *Industrial Relations Act (Cwth)*.

This ground of appeal was upheld and the convictions were quashed. The appellant appeals to this Court, pursuant to s90 of the *Industrial Relations Act (WA)*, on the ground of error of law.

The question is whether s109 of the *Australian Constitution* invalidates s96E(1)(b) of the State Act because those provisions of the State Act are inconsistent, in the constitutional sense, with the Commonwealth Act. Section 109 provides:

> "Where the law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid."

The question of inconsistency within the meaning of s109 is a matter of construction of the paramount legislation. See ***Miller v Miller*** (1978) 141 CLR 269, at 275; ***Ansett Transport Industries (Operations) Pty Ltd v Wardley*** (1980) 142 CLR 237, at 248-252 and 259. The court must ask itself what is the field or subject matter of the Commonwealth law and, having identified the field, consider whether the Commonwealth law intended to cover the field. As Barwick CJ said in ***Miller v Miller***:

> "There are two distinct bases for the conclusion of inconsistency within the meaning of s109 of the Constitution. There may be what may be called a textual collision between the provisions of the Australian Act and of the State Act or the Australian Act may manifest an intention on the part of the Parliament that its law on the topic of its Act shall be the law, that is to say, the exclusive law on that topic both for what it forbids and what it allows."

In the words of Dixon J in ***Ex parte McLean*** (1930) 43 CLR 472, at 483:

> "It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed."

Of course, it is necessary in cases in which the doctrine of inconsistency is relied on to invalidate a State law, to "take the law .... with which the State law is alleged to be inconsistent and discern *precisely* (my emphasis) the matters which it is the intention of the Parliament .... are to be exhaustively determined thereby"—***Metal Trades Industry Association v Amalgamated Metal Workers' and Shipwrights' Union*** (1983) 152 CLR 632 , at 642. In my opinion, an examination of the Commonwealth Act in this case reveals no intention that the Act is to be the whole law on the subject with which s96E(1)(b) is concerned.

According to the grounds of appeal set out above, the specific matter with which the Commonwealth Act is said to deal is "the regulation of recruitment of members of Unions registered under the Federal Act". I am not sure Mr Johnston, on behalf of the appellant, adhered to that identification of the relevant subject during the course of his argument before this Court. At one point he contended that the topic was as broad as "the regulation of matters pertaining to the relationship of employers and employees, including non-members". I think it is impossible to regard the Commonwealth Act as intended exhaustively to cover every matter that might conceivably fall into that category. Taking the subject matter to be that which is stated in the grounds of appeal or, perhaps, as being the conduct which may be engaged in by a federally registered organisation or by its representatives in order to require or induce eligible employees to become members of the Union and to prevent their employment if they will not join, I am still not able to see anything in the Commonwealth Act showing an intention that it is to be the whole law on that subject. There is no express provision in the Commonwealth Act which authorises Unions or their agents to engage in the conduct prohibited by s96E(1)(b); and it is not possible from a perusal of the express terms to conclude, as submitted by Mr Johnston, that the absence of express provision on the subject is a mere silence as to particular matters within the field which the Commonwealth legislation intended to cover.

The conduct or activities in which federally registered Unions or their agents may engage for the purposes of recruitment or to prevent the engagement of non-union labour in the workforce is, with some specific exceptions which I will mention, not a matter with which the Commonwealth legislation is concerned.

The Full Bench referred to numerous provisions of the Commonwealth Act and concluded that it "is a wide ranging Act which regulates organisations, arbitration, conciliation and other matters" and which contained an "exhaustive code for the Federal conciliation and arbitration system, the registration and de-registration of organisations and their rules, and the regulation and conduct of their officers, including what acts constitute offences for the purposes of the Commonwealth Act". In expressing themselves in this way, the Full Bench were purporting to apply the principle stated in cases such as ***O'Sullivan v Noarlunga Meat Ltd*** (1954) 92 CLR 565, per Fullagar J at 592, to the effect that it will be a compelling

indication of an intention to exclusively cover the field if the Commonwealth law is "extremely elaborate and detailed (*loc cit*)" or contains "detailed provisions relating to" the topic (***Australian Broadcasting Commission v Industrial Court (SA)*** (1976) 138 CLR 399, per Mason J at 415) and if, on its proper construction, the Commonwealth law "constitutes a comprehensive code governing" it (***Botany Municipal Council v Federal Airport Authority*** (1992) 175 CLR 453, at 470). With all respect to the Full Bench, I do not think this case can be disposed of by concluding that the Commonwealth Act is wide-ranging in respect to the matters with which it is concerned, nor by concluding that it does extensively regulate and proscribe conduct of union officers and the behaviour of the organisations themselves in various respects. Neither is it much to the point to say, as Mr Johnston did, that the Commonwealth Act contains extensive provisions relating to the incorporation and the governance of industrial organisations, their membership rules, de-registration and matters such as that. The question is whether the paramount law is intended to deal exclusively with the particular topic dealt with by s96E(1)(b). I am not persuaded that merely because the Commonwealth Act deals with a wide range of matters, including matters to do with membership and with the conduct of officials, it leaves no room for a State law such as s96E(1)(b). There are many cases which show that State laws can quite closely co-exist with the Commonwealth Act in their application to persons bound by the latter or by awards made under it. For example, in ***R v Clarkson; ex parte General Motors Holden's Pty Limited*** (1975) 134 CLR 56, it was held that a federal award regulating the dismissal of employees and providing for pay entitlements in the event of dismissal did not exclude the operation of a State law dealing with reinstatement of dismissed employees even although the award was wide ranging in its provisions as regards dismissed employees.

In ***T A Robinson & Sons Pty Ltd v Haylor*** (1957) 97 CLR 177 a federal industrial award made under the Commonwealth Act contained detailed comprehensive provisions governing the terms and conditions of employment in the footwear manufacturing industry. It contained no provision concerning long service leave. It was held that the award did not displace the State *Long Service Leave Act* because "there is nothing to show that [the Conciliation Commissioner] meant that his determination should cover the ground of long service leave to the exclusion of any other right arising from any other source of authority" (*ibid* at 184).

The question in each case is whether the Commonwealth statute shows an intention to cover the precise subject matter and provide exhaustively what the law on it shall be.

As to the exceptions to which I have referred, the Full Bench was apparently significantly influenced by the terms of s320 of the Commonwealth Act. This is the section which contains provisions designed to protect the employment of non-unionists who are conscientious objectors as defined by s267 and to protect employers of conscientious objectors from industrial action. However, in my opinion, the insertion into the legislation of these specific provisions making it an offence under the Commonwealth Act to behave in certain ways in respect to conscientious objectors and in respect to employers of conscientious objectors does not show that the Parliament intended to cover the field of Union recruitment or the field of coercive activity regarding non-union labour at worksites.

This is not to say that s96E(1)(b) may not be invalid to the extent that it might apply in the field of conscientious objection, but that question does not arise in this case.

Of course, as Pincus J pointed out in ***Sharpe v Goodhew*** (1990) 33 IR 238, at 243, there are obviously limits to a State's powers of interference with federally registered Unions. However, I cannot see how prohibiting conduct such as that proscribed by s96E(1)(b) would interfere with the capacities and functions of a Union in any relevant sense. It does not for example purport to qualify the eligibility of persons to become members, nor does it operate as a restraint on membership or anything of that kind.

The case does not (and Mr Johnston did not argue that it does) come within the class of cases such as ***Williams v Hursey*** (1959) 103 CLR 30, where it was decided that State legislation prohibiting political levies by a Union could not stand with a provision in the Union's federally registered rules which was to the contrary. In this case, we have not been taken to any rule of the Transport Workers Union which is said to empower the Union, or to authorise its officials, to engage in conduct proscribed by s96E(1)(b).

In my opinion, there is no foundation for concluding that the Commonwealth Act excludes a State law such as s96E(1)(b) of the *Industrial Relations Act (WA)* from applying to the activities of officials or agents of federal Unions.

I would allow this appeal.

SCOTT J:

I have had the advantage of reading the draft reasons to be published by Anderson J. I agree with the conclusion his Honour reaches.

Anderson J has fully set out the facts surrounding these complaints and it is not necessary to repeat those facts here. The issue that arises in this case is whether s96E(1)(b) of the *Industrial Relations Act 1979* (the *Industrial Relations Act*) is inconsistent with the provisions of the *Commonwealth Industrial Relations Act 1988* so that by reason of s109 of the *Australian Constitution* the State Act is invalid to the extent of the inconsistency.

In ***Miller v Miller*** (1978) 141 CLR 269, Barwick CJ in a judgment with which Gibbs, Stephen, Jacobs and Aickin JJ concurred, said at 275:

> "The relevant constitutional law is not in doubt and has frequently been stated. It now needs no documentation by reference to the decided cases. There are two distinct bases for the conclusion of inconsistency within the meaning of section 109 of the *Constitution*. There may be what may be called a textual collision between the provisions of the Australian Act and of the State Act or the Australian Act may manifest an intention on the part of the Parliament that its law on the topic of its Act shall be the law, that is to say, the exclusive law on that topic both for what it forbids and what it allows.
>
> The question in this case is to be resolved by a construction of the Australian Act. Is the right conclusion, from a perusal of its terms, that the Act intends to be the law only as to interception of messages passing over the telephone system other than over so much of it as is within the premises to which the telephone service is connected or does it intend to be the whole law as to the interception of telephonic messages? In my opinion, the answer to this question disposes of both the amended grounds of appeal. For, if the Parliament has exhibited what for brevity I shall call the limited intention, it has nothing to say as to a matter beyond the area within and about which it intended to legislate: such a conclusion would leave the State free to legislate in the area outside the limited field occupied by the Australian Act. In that case there would, in my opinion, be no room in this case for a textual collision. The Parliament would have said nothing as to the matter on which the State has now legislated. But if, on the other hand, the Australian Act shows an intention that it shall be the whole law with respect to telephonic interception, both grounds of inconsistency would be made out. As the whole law on the subject, the effect of section 4(2) would be that action within its terms would be lawful. No State might validly say it was unlawful to do what the Australian Act allows or attach consequences to such action on the footing that it was proscribed."

In the same case Jacobs J considered the problem at 279:

> "It is clear that the Commonwealth Act would cause to be invalid under section 109 a law of the State which made evidence admissible of information obtained by intercepting, within the meaning of that word in the Commonwealth Act, a communication passing over the telephone system. The divulging or communicating by the person as a witness would be contrary to section 5(3) of the Commonwealth Act. The State Act would be directly inconsistent and to the extent of the inconsistency would be invalid. It would not matter whether the Commonwealth Act and the State Act were on the same subject matter or not. However, when there is no direct inconsistency but at the most that indirect inconsistency which is often called 'covering the field', subject matter becomes very important. In the present case there is in my view no

direct inconsistency. It must therefore be determined whether it appears from the terms, the nature or the subject matter of the Commonwealth Act that it was intended as a complete statement of the law governing the divulging or communication of information obtained by intercepting a communication passing over the telephone system, including a complete statement not of what may not but also of what may be divulged or communicated in civil or criminal proceedings in a State court."

Section 96E(1)(b) of the *Industrial Relations Act* provides:

"**96E.** (1) A person, including an organisation of employees, must not threaten that—

(a) discriminatory action will or may be taken against a second person; or

(b) the free and lawful exercise of a second person's trade, profession or occupation will or may be interfered with,

by reason of the circumstance that the second person or a third person is not a member of an organization of employees."

It is to be noted that in the definition section of Part VIA of the *Industrial Relations Act* (the part in which s96E appears), organisation of employees is defined in the following way:

"**Organisation of Employees** means—

(a) an organisation of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Commonwealth Act and by whatever name calls;

(b) an industrial association of employees registered under section 67; or

(c) an association, society or other body that has applied to be constituted, incorporated or registered as an organisation of employees referred to in paragraph (a)."

It follows from the definition of "Organisation of Employees" that the State Act purports to apply s96E to an organisation of employees registered under any Commonwealth Act as well as under the State Act.

There is no direct equivalent to the provisions of s96E of the *Industrial Relations Act* to be found in the *Industrial Relations Act 1988 (Cth)*. The nearest equivalent provision is to be found in s320 in a section which deals with offences in relation to conscientious objectors. It is not necessary to repeat that entire section for the purpose of these reasons but the commencement of the section is as follows:

"**320.** (1) An employer shall not:

(a) dismiss an employee who is a conscientious objector, injure such an employee in his or her employment, or alter the position of such an employee to the employee's prejudice, because the employee is not a member of an organisation;"

It can therefore readily be seen that this is not a case in which there is any textual collision between the provisions of the Federal Act and the equivalent State legislation in the terms referred to by Barwick CJ in ***Miller v Miller*** (*supra*) at 275. If s109 of the *Australian Constitution* has any role to play in relation to this case, it will arise because the Commonwealth Act manifests an intention on the part of the Commonwealth Parliament that its law on the topic of its Act shall be the law, that is to say, the exclusive law on that topic both for what it forbids and what it allows (again quoting Barwick CJ in ***Miller v Miller*** (see p 3 thereof)). The question therefore involves an analysis of the Federal legislation to see if it is possible to distil from that legislation an intention on behalf of the Federal Parliament to enact exclusive laws in relation to the topic under discussion.

If it be the case that the Federal Parliament intended to proscribe the conduct of the respondent in this case it is likely that a section similar to s96E of the *Industrial Relations Act (WA)* would have been inserted in the Federal legislation in the same chapter in which s320 appears. That part of the Commonwealth Act (Part X) deals with offences and as I have said earlier in these reasons, no equivalent of s96E of the State Act can be found in that part. That of course does not necessarily answer the question because it may be that the Commonwealth Parliament by not proscribing the conduct concerned was intending to legislate in such a manner that the conduct would not be unlawful. In ***Ex parte McLean*** (1930) 43 CLR 472 at 483, Dixon J (as he then was) said at 485:

"If a Federal statute forbids a particular act or omission and means to state what shall be the law upon that specific matter, any State law which deals with the same act or omission would become inoperative, and it would probably be of no importance whether each legislature was directing its attention to the same general topic or had dealt with the same act or omission in the process of legislating upon two entirely different subjects."

Dixon CJ further said at 486:

"It may be assumed that provisions of State law which prohibit acts or omission irrespective of the relation of employer and employed, and without regard to any other industrial relations matter, are not superseded under section 109 merely because it happens that in their industrial aspect the same acts or omissions by parties to a dispute are forbidden by Federal award and by this means made punishable under the Federal statute. But, in this case, the State law, section 4 of the *Masters' and Servants' Act 1902* deals directly with the relation of employer and employed, and in virtue of that industrial relation makes penal the very default which the Federal law punishes somewhat differently in the regulation of the same relation."

Having examined the provisions of Part X of the *Industrial Relations Act 1988 (Cth)* I am unable to deduce any intention on behalf of the Federal Parliament to "cover the field" in this case. The question here is whether the Commonwealth statute shows an intention to cover the subject matter and provide exhaustively what the law on it shall be. See Dixon J in ***Ex parte McLean*** (*supra*) at 483.

The first step in applying such a test is to identify "the field" which the Commonwealth statute intends to govern. In this respect, leading counsel for the respondent was unable to identify with any degree of precision the field which it was said was governed by the Commonwealth legislation. At page 24 of the transcript of the hearing of the appeal the following passage appears:

"Parker J: So do you identify the field as the field of conduct relating to the inducement or persuasion of people to join a Federal union?

Johnson, Mr: That is the essence of it, your Honour. We would put it perhaps more widely than that in respect of cognate offences—offences by employers, for example, as to what responsibilities and what liabilities they may occur when pressure is put upon them to, for example, dismiss an unco-operative employee."

When further pressed on the same topic at page 41 of the transcript, the following exchange appears:

"Parker J: I wonder whether you would be able to put in very careful words the field that you advocate Mr Johnson. You have put it in, I think, more than one way so far and I would like to be clear as to just what is the field.

Johnson, Mr: The narrowest redoubt of the field, your Honour, because it is part of the—it is in a sense part of a continuum and reduced ----

Parker J: I understand you originally to speak of the field being recruitment efforts by Federal union officers. In your most recent statement of it you put it as the field of criminal sanctions for recruitment efforts.

Johnson, Mr: Those two aren't necessarily incompatible but I think I would be misleading the court if I didn't say that the field that we perceive is the relevant subject matter here in a sense is wider than criminal sanctions relating to recruitment of membership. We say it is in the use of criminal sanctions with respect to relationships between employers, organisations and members. It is perhaps a latter-day reconstruction but we would say that it is broader than simply activities directed to, or conduct directed to, recruitment of membership. We say it is a matter relating to conduct of organisations in their relationship with employers and members and non-members. So it is in that

employment relationship, members and potential members, that where the Commonwealth Act pulls up short is to deal in a criminal way with those matters and we would say closes the field not only ---

Parker J: Are there two propositions there or one? I am still trying to get it clear in my mind and I am sorry to have not grasped it yet. One proposition is the field. A second proposition that you have advanced is that in dealing with the whole field the Commonwealth Parliament did not enter into the provision of certain criminal penalties for conduct within the field.

Johnson, Mr: (inaudible) didn't deliberately give knowledge.

Parker J: Yes, but is your field still criminal conduct relating to the recruitment of officers by Federal unions or is your field the recruitment of members by officers of Federal unions?

Johnson, Mr: In a sense, your Honour, its akin to the latter but wider than the latter. It is not simply ---

Parker J: What is the full statement then?

Johnson, Mr: Its full statement is the regulation of matter pertaining to the relationship of employers and employees, including non-members. It may be that within that—and I don't want to come back to the very narrowest focus that has been proposed, but it may be within that, your Honours, that it could come back as far as penal sanctions in relation to such matters as the relationship between organisations, employers and employees and non-members."

It can therefore be seen that leading counsel for the respondent was having difficulty in identifying with any degree of precision the "field" which he maintained was covered exclusively by the Commonwealth legislation. Indeed, that is not surprising because an examination of Part XI of the *Commonwealth Act* relating to offences does not reveal any particular "field" which the Act intends to cover. That being the case, in my opinion it is impossible to conclude that the Commonwealth Act intended to prevail over the State Act with respect to the offence provision created by s96E of the State legislation.

It is to be noted that the Full Bench of the Industrial Commission relied upon the decision in ***Wenn v The Attorney-General (Vic)*** (1948) 77 CLR 84 as an example of the kind of legislation into which it is said the legislation presently under consideration falls. That case involved what was said to be a conflict between the *Re-establishment and Employment Act 1945* of the Commonwealth and the *Discharged Servicemen's Preference Act 1943* of Victoria which was said to be in conflict. In that case Latham CJ with whom Rich, Dixon and McTiernan JJ agreed said at 109 after citing ***Ex parte McLean*** (*supra*):

> "Where it can be seen by an examination of the terms of the Federal statute that 'the Federal Scheme will be hindered or obstructed' by any additional regulation by any other authority, then Federal legislation excludes the exercise of State authority with respect to the subject matter (see *Stock Motor Ploughs Ltd v Forsyth* (1932) 48 CLR 128 at 147). In such a case the Commonwealth Parliament shows an intention to 'cover the field' to use the phrase of Isaacs J in *Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466, and where such an intention is discoverable the State is prevented from entering the field. Sometimes there may be a difficulty in determining what the 'field' is as well as determining whether there is an intention to 'cover the field'. In the present case, however, the legislature has made its intention clear by saying in s24(2) that the subject-matter as to which it is intended that the legislation shall be exclusive and exhaustive is 'preference in any matters relating to the employment of discharged members of the forces'. This provision expressly states an intention to make the Federal legislation exclusive and exhaustive":

An examination of the legislation in this case does not indicate any such intention.

For these reasons, in my opinion, in addition to those of Anderson J, this appeal should be allowed.

PARKER J:

I have had the advantage of reading in draft the reasons which Anderson J has prepared in this matter. I agree with the reasons and the conclusions reached by Anderson J and with the disposition of this appeal which he proposes. I would merely add the following observations.

The *Industrial Relations Act 1988 (Cth)* ("the *Commonwealth Act*") makes quite extensive and in parts detailed provision about many matters relevant to registered organisations of employees ("Federal unions") including some provisions as to eligibility for membership of a Federal union and the cessation of membership. Subject to a few exceptions which I will mention later the *Commonwealth Act* is, however, quite silent as to matters relating to the recruitment of members by a Federal union and the actions lawfully open to a Federal union or its officers, or prohibited to them, which are directed to encouraging, persuading or forcing a person to join a Federal union; that is so whether the issue is the direct action of a Federal union or its officers or indirect action involving others including a person's employer.

In the submission for the respondent union officer, this "silence"—the absence of legislative provision authorising or precluding particular actions—should be seen as reflecting a conscious decision by the Federal Parliament that these matters were, in the interests of industrial relations, deliberately left unregulated. The scheme of the *Commonwealth Act* should be seen to be, it was submitted, that such activities should not be subject to any legislative provision or restriction, whether Federal or State. "Inconsistency" within the meaning of s109 of the *Constitution* thus arose because s96E of the *Industrial Relations Act 1979 (WA)* ("the *State Act*") intruded into an area which the Federal Parliament had determined should not be regulated by law. In the sense of ***Clyde Engineering Co Ltd v Cowburn*** (1926) 37 CLR 466 and ***Ex parte McLean*** (1930) 43 CLR 472 the *Commonwealth Act* was intended to "cover the field".

The whole "field" for the purposes of the *Commonwealth Act* seemed, at some points of the respondent's submissions, to include anything done by or for the purposes of a Federal union and its officers. The grounds of appeal, however, put the "field" on a more limited basis *viz* the "regulation of the recruitment of members of Federally registered unions". While there was some ambivalence as to the extent and identification of the "field", indeed it was formulated in a number of ways during argument, it always included any "conduct engaged in by a Federal union or persons acting for such a union with a view to inducing or coercing a person to join" the union.

The authorities, and the nature of the submission, draw attention to the relevance of the "field". The wide expression of it noted above, *viz* anything done by or for the purposes of a Federal union, is of some materiality because it tends to reveal something of the extent of the legislative "silence" of the *Commonwealth Act*. The Act does make provision with respect to many matters relating to Federal unions, including their formation, registration, rules, management, elections and so on. The industrial functioning of a Federal union and its officers is subject to some specific and carefully shaped provisions but, more generally speaking, is recognised rather than regulated by the *Commonwealth Act*. These specific provisions aside, the *Commonwealth Act* does not set out to regulate what may or may not be done by Federal unions, or for what purposes.

While the extent of this legislative "silence" makes it so attractive for an officer of a Federal union to submit that the "silence" reveals an intention of the Federal Parliament that the activities of a Federal union and its officers within the scope of the "silence" should not be subject to any legislative restriction or restraint, State or Federal, the extent of the silence also presents real problems in making good the submission because of the absence of legislative indications of any such intention and the implications of such a view.

The narrower statements of the "field" attempted for the respondent, especially those focusing on recruitment, seem to be merely a narrowing of the full scope of the legislative "silence" to focus on the facts raised by the present complaints. Certainly, the Act itself provides no basis for seeing "recruitment" to a Federal union as subject to any discreet policy of exemption from legislative control.

The respondent, and the Full Bench of the Commission, sought to draw much from the detail and extent of the regulation of Federal unions provided by the *Commonwealth Act* relying on ***O'Sullivan v Noarlunga Meat Ltd*** (1954) 92 CLR 565. The difficulty with this approach is that, as already indicated, the provisions which are made, extensive and detailed as they may be in some respects, deal with other matters and, a few specific provisions aside, do not intrude into the conduct of Federal unions or their officers, especially conduct directed or relating to recruitment to a Federal union.

The *Commonwealth Act* reveals that the Federal Parliament was well conscious that some conduct by Federal unions and their officers should be shielded from the operation of State and other Federal laws. A number of provisions provide that Federal unions and their officers are, in a number of situations, shielded from the operation of criminal or civil laws. Examples of these types of provisions include the provisions dealing with boycotts. Section 163F provides:

> "163F. Criminal proceedings do not lie against a person merely because the person has engaged in boycott conduct."

Sections 165 to 166A restrict civil actions under State or Territory laws against a union or its officers or members in respect of specified conduct which includes, by s166A, "conduct in furtherance of claims the subject of an industrial dispute". In some respects any form of action under a law of a State or Territory is precluded, but in others only actions in tort. Other significant provisions are to be found in Part B Division 4 (s170PA ff). This Division provides immunity, in carefully specified circumstances, to a Federal union and its officers and members with regard to strikes. It is the express object of the Division to give effect, in particular situations, to Australia's international obligation to provide for a right to strike; see s170PA(1). As part of the scheme of Division 4, certain action by employees in the way of strikes and other forms of industrial action, and responsive action by an employer in the way of a lock-out, is given the status of "protected action". By s170PM(3) it is provided that actions do not lie under any law (whether written or unwritten) in force in a State or Territory in respect of such "protected action" unless it has involved or is likely to involve personal injury, wilful or reckless destruction of or damage to property, or the unlawful taking, keeping or use of property. By s170PM(4) actions for defamation are not prevented by subs(3).

Provisions such as these not only indicate that the Federal Parliament was well aware of its capacity to preclude the operation of State criminal and civil laws to Federal unions and their officers where the interests of industrial relations commended that to the Parliament, but when these and other provisions in the *Commonwealth Act* are studied, they reveal the precise care taken to delimit the circumstances in which there will be immunity from the criminal or civil laws of the States, and the extent of any such immunity.

It is by way of contrast that there is a complete absence of provisions of this nature, *inter alia*, as to the conduct of Federal unions and their officers in relation to what the respondent has described as "recruitment". When pressed as to the wide scope of the "silence" of the *Commonwealth Act* and hence the width of the consequential immunity contended for by the respondent, and as to some of the implications even if the "field" were narrowed to "recruitment" activities, it was submitted—drawing by analogy on ***P v P*** (1994) 181 CLR 583 at 602-604—that it might be proper to presume that the Federal Parliament did not intend that Federal unions and their officers be immune from the "general body of the criminal law", State and Federal. It was submitted, however, that s96E of the *State Act*, although creating an offence, was not part of the general body of the criminal law because it sought to regulate industrial relations. For this reason s96E was not within any such presumed legislative intention.

That submission presents some conceptual and practical difficulty. There is no rigid or consistent distinction between the types of offences in a statute such as the *Criminal Code* and a law such as the *State Act*. It is common place in this day and age for offences, whether indictable or summary, to be provided in a very wide range of statutes. Provisions relating to the hindering or preventing a person working at his trade were to be found in the *Criminal Code* of this State until 1985 and a conspiracy to do so is still a Code offence. There remain today provisions of the *Criminal Code* which overlap the operation of s96E of the Act and which may well have had some application to the conduct of the respondent which gave rise to the present complaints. For example s550 of the *Criminal Code* makes it an indictable offence to intimidate or annoy a person to compel that person to abstain from doing an act which he has a legal right to do.

As both the *Commonwealth Act* and the *State Act* deal with industrial relations one might well more readily discern an intention in the *Commonwealth Act* that some or all activities by unions registered under that Act relating to industrial matters, should not be subject to regulation under State industrial relations laws. Whether that is so and if so whether partly or wholly so, must be discerned, however, from the provisions and policies of the *Commonwealth Act*, not from any preconceived presumption that a Federal union should only be regulated by Federal industrial law. Some provisions of the *Commonwealth Act*, such as Part VII providing for co-operation with the States and s293 and schedule 4 dealing with complementary systems for the registration and regulation of Federal unions and *inter alia* the participation of a Federal union—and registration of a branch of a Federal union—in a State industrial conciliation and arbitration system, with common officers, provides reason to be cautious about too readily concluding that immunity from even State industrial laws was intended in all circumstances.

Insofar as reliance was placed on ***P v P***, this is not a case concerning a conferral of jurisdiction to make orders, whether upon a Federal or State court or tribunal. Insofar, however, as there may be some analogy, as the *State Act* like the *Commonwealth Act* operates in the field of industrial relations, ***P & P*** serves to confirm that the question is whether the *Commonwealth Act* discloses a legislative intent to cover the relevant field. If it does not it is necessary that there be direct inconsistency, the existence and extent of which depends upon the terms and operation of each; see ***P v P*** at 603.

The provisions of the *Commonwealth Act* do provide some indication that, apart from its specific provisions, the conduct of Federal unions and their officers are to be subject to the law in force where the conduct occurs. Section 194FF requires that a Federal union have rules and s196 precludes those rules being contrary to "the law" or being such as to prevent or hinder members from "observing the law". Reliance was place on s334 of the Act by the respondent, but provisions such as 334(1)(j), (2)(g), and (3)(f) preclude an employer *inter alia* from dismissing or threatening to dismiss, or refusing to employ, an officer or member of a Federal union who has done or proposes to do an act for the purpose or protecting the industrial interests of the Federal union but only "where the act or thing is (i) lawful....". Provisions such as these provide an indication of a legislative intent contrary to that contended on behalf of the respondent. Further, I do not see any sound basis why these provisions should not be given their ordinary meaning. Instead, it was submitted, they should be read so that the notions of what "is lawful" or "observing the law" exclude only conduct prohibited under Federal industrial law, or alternatively under Federal law generally, or in addition under the general body of State criminal law—all of which were canvassed before us—but not to exclude conduct prohibited by statute as an offence because the offence is enacted in a law of a State which deals with industrial relations.

Section 334 of the *Commonwealth Act* was one of the exceptions mentioned earlier in these reasons. Apart from the operation of s334 already identified, its general effect is to preclude an employer dismissing or prejudicing an employee for a variety of reasons which include the employee being an officer, delegate or member of a Federal union, or the employee refusing to join in industrial action, or to participate in a secret ballot ordered by the Federal Commission. The reasons for, and policies behind, these provisions may be readily discerned in the context of the Act. In no respect do the provisions provide support for the legislative intention contended for the respondent, however that intention is precisely framed.

The other exception which is relevant and upon which reliance was made by the respondent is s320. This provides for offences in relation to conscientious objectors. Section 320 precludes conduct by a union (or its officers—see subs(6)(b)) to coerce a person to join a Federal union who has a conscientious objection to union membership. Such conduct includes

prejudicing a person in their employment or coercing the employer to dismiss or prejudice a conscientious objector, or to threaten such action.

There is some scope in a number of factual situations for s320 to overlap in operation with s96E of the *State Act.* There is therefore scope for s109 of the *Constitution* to operate to preclude the operation of s96E in respect of persons who have a conscientious objection to membership of a Federal union. There is, however, no question of conscientious objection in the present complaints.

The existence of s320, however, gave rise to the submission that it revealed an intention by the Federal Parliament that such coercive conduct by a Federal union or its officers should only be precluded and made subject to penalty for an offence when directed to a conscientious objector. In my view that was not a persuasive submission. It seems far more likely that it was perceived by the Federal Parliament that the interests of conscientious objectors required special and specific protection, both for the protection of those interests and to seek to minimise the extent to which conscientious objectors might cause or become the focus of industrial disputation.

I am unable to see from the presence and nature of the provisions of s320 that it was the intention of the Federal Parliament that conduct of the type proscribed by that provision, when directed to the case of persons who had no conscientious objection, should not be the subject of any criminal prohibition or statutory regulation by the law of the State.

In these observations I have merely sought to amplify in some respects the reasons which have led me to agree with the conclusion of Anderson J and his reasons for concluding that the *Commonwealth Act* does not exclude the operation of s96E(1)(b) of the *State Act* from applying to the activities of the respondent in this case, even though he may have been acting as an officer of a Federal union.

I too would allow this appeal.

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Industrial Relations Act 1979.

Appeal No. IAC 19 of 1996

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matters Numbered 1246—1250 of 1995 dated the 4th day of November 1996.

B E T W E E N

Allan Graham Shuttleton
Appellant

and

John Cain
Respondent.

BEFORE:

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

2 April 1997.

Order.

HAVING heard Mr R E Cock and Mr C Pruiti (of Counsel) for the appellant, and Mr P W Johnston and Mr M D Cuomo (of Counsel)) for the respondent, THE COURT HEREBY ORDERS that:

1 Each of the five appeals be allowed;
2 The decision of the Full Bench to quash the convictions be set aside;
3 Matters otherwise before the Court to be remitted to the Full Bench to be dealt with in accordance with this decision.
4. There be liberty to apply.

(Sgd.) JOHN G. CARRIGG,
[L.S.] Clerk of the Court.

FULL BENCH— Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Mining Corporation Limited
Appellant

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers
Respondent.

No 800 of 1996.

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

10 April 1997.

Reasons for Decision.

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

This is an appeal against the decision of the Commission, constituted by a single Commissioner, and brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The decision was made on 8 May 1996 in matter No CR 117 of 1996. That decision was, formal parts omitted—

> "THAT Mr Marc Deveny be reinstated in his previous position with the respondent, as Diesel Operator at the St. Ives Junction Mine, Kambalda, W.A. without any loss of any entitlements under his contract of employment for the period from the termination of his employment to the 7th May 1996."

The matter had been referred to the Commission by the respondent, pursuant to s.44 of the Act, which sought reinstatement of Mr Marc Terrence Devany to his position without any loss of earnings or award entitlements.

It is against that decision that the appellant now appeals on the following grounds—

"The Commission erred in fact and law in—

The Evidence

A. failing to make any finding as to whether the Commission accepted the evidence of Marc Devany ("Devany") over the evidence of Miocevich, Watson and Eastman when that evidence was directly and materially inconsistent;
B. failing to give any or any adequate weight to the evidence of Miocevich and Watson that Devany had confessed to being a user of cannabis;
C. failing to give any or any adequate weight to the unchallenged evidence of Miocevich that Devany told him that the cannabis helped Devany to sleep;
D. failing to find, on the balance of probabilities, that Devany was a user of cannabis;
E. failing to draw an inference, in accordance with the rule in Jones v Dunkel, that the evidence of Berry would not assist the Respondent's case;
F. failing to give any or any adequate weight to the evidence of Watson, Miocevich, Eastman and X that Devany had expressed concerns about the effect of a conviction for possession of cannabis on his employment with the Appellant;
G. finding that Devany was convinced that the charge of possession of cannabis was a minor one and would not result in a conviction of the sort that would jeopardise his employment

with the Appellant, against the weight of the evidence presented to the Commission;

H. failing to give any or any adequate weight to the evidence of Miocevich and Watson that Devany was never told that a conviction for possession of cannabis was equivalent to a parking ticket;

I. failing to find that Devany knew or should have known before 9 April 1996 that a conviction for possession of cannabis would affect his employment with the Appellant;

Procedural Fairness

J. finding that any failure by the Appellant to afford Devany procedural fairness rendered his dismissal by the Appellant harsh, oppressive or unfair;

K. finding that Devany had not been afforded procedural fairness by the Appellant;

L. finding that the failure by Dawes to ask Devany whether he used cannabis or to whom the cannabis in Devany's possession belonged resulted in Devany not being afforded procedural fairness by the Appellant;

M. finding that the failure by Dawes and French to not further investigate Devany's claim that the cannabis was not his resulted in Devany not being afforded procedural fairness by the Appellant;

N. finding that it was necessary for French to personally hear Devany so as to afford him procedural fairness;

O. finding that the evidence of X that the cannabis belonged to Berry should or would have had affected the validity or fairness of the Appellant's decision to terminate Devany's employment with the Appellant;

The Test To Be Applied

P. finding that it had to be proved by the Appellant that Devany was a user of cannabis and that he had or was likely to attend for work under the influence of cannabis;

Q. relying on the fact that Devany had worked four shifts at the Appellant's mine after his conviction for possession of cannabis to demonstrate that Devany was not a user of cannabis and/or there was no relevant risk;

R. finding that the decision of the Industrial Court of South Australia in Laurie v Mt Gunson Mines Pty Ltd (48 SAIR 656-681) represents the law in Western Australia, was based on facts materially similar to those before the Commission and relying on it;

S. failing to find that the Appellant could rely on Devany's plea of guilty to a charge of possession of cannabis as evidence of the elements of that offence;

T. failing to find that the Appellant had discharged its onus under section 23AA of the Industrial Relations Act 1979 ("the Act") by demonstrating that it had a reasonable suspicion amounting to a belief that Devany was in possession of cannabis on the Appellant's mining lease and intended to consume the cannabis himself (or supply it to others to consume);

U. failing to find that Devany's criminal conduct touched the course of his duties or his abilities in relation to those duties;

V. failing to find that Devany's possession of cannabis on the Appellant's mining lease presented a potential for the consumption of cannabis on the Appellant's mining lease resulting in a material risk to the safety of the Appellant's personnel and operations and that that conduct constituted grounds justifying Devany's dismissal by the Appellant;

W. failing to give any or any adequate weight to the evidence that the consumption of cannabis in proximity to mining operations presented a significant safety risk to the operations on that mining lease;

X. finding that Mr French based his decision to dismiss Devany from his employment with the Appellant on the conclusion that it was more probable than not that Devany would attend work under the influence of cannabis;

Y. finding that Devany was harshly, unfairly or oppressively dismissed from his employment with the Appellant.

The Appellant seeks orders—

1. that the appeal be allowed; and
2. that the orders of the Commission be quashed and substituted for an order that the Respondent's Application be dismissed."

APPLICATION UNDER S.27(1)(A)(II) OF THE ACT

It was submitted by Mr Hammond (of Counsel) that the appeal should not be heard further and should be dismissed because on 8 October 1996 the employee at the heart of these proceedings, Mr Devany, was dismissed. It was submitted that there was no practical purpose to be achieved by the appeal proceeding. That is because whatever the decision Mr Devany would remain dismissed. Mr Hammond described the question as "academic", particularly because the appellant did not any longer employ any employees in the Kambalda area or in Western Australia. There would be a decision in a vacuum of no practical effect, Mr Hammond submitted.

Mr Hammond relied on the dicta of the Industrial Appeal Court in CWAI v FMWU and Others 70 WAIG 1281 at 1282 (IAC) and the cases cited therein, and, in particular, the dictum of Lockhart J in Veloudos and Others v Young [1981] 56 FLR 182 at 190 (FC), where His Honour said—

> "Courts will not decide a question that is academic in the sense that it is useless, merely hypothetical, raised prematurely or a dead issue; although they preserve a discretion to determine a question which has ceased to be a live issue inter-parties where the determination would be in the public interest."

It was submitted that the determination of this one unfair dismissal case could not be said to be in the public interest when these principles or issues of law are coming before the Commission on a daily basis.

After a short adjournment, two affidavits, both sworn by Linda Christine Thipthorp on 2 December 1996, were filed and tendered on behalf of the appellant, as a result of which the Full Bench was able to find that Mr Devany had made application in the registry of the Australian Industrial Relations Commission alleging that he received written notice of dismissal dated 8 October 1996 terminating his employment as at 29 October 1996.

Mr Power (of Counsel), for the appellant, submitted that because there are proceedings in the Australian Industrial Relations Commission, and later perhaps in the Industrial Relations Court of Australia, in which Mr Devany seeks reinstatement, the appeal is not useless merely hypothetical or dead. That was because, it was submitted, if this Bench allowed this appeal there would be no necessity for the s.170E application to proceed before the Industrial Relations Court of Australia. There was also, we were informed, an application afoot under s.170GA of the Industrial Relations Act 1988 (Commonwealth) (as amended).

It was therefore submitted by Mr Power that if the question of whether or not Mr Devany was properly reinstated by order of the Commission at first instance on 8 May 1996 is determined upon appeal now then the application at the Australian Industrial Relations Commission may never have to be dealt with.

The application which Mr Hammond made under s.27 of the Act could have been made in October 1996, Mr Power submitted.

It was therefore submitted that the question raised in this appeal was not merely hypothetical, nor was it raised prematurely or as a dead issue. The second limb of the test

was not required to be invoked, Mr Power submitted. However, it was submitted that the question of whether or not possession of cannabis on a mine site warranted dismissal was a matter of public interest.

Mr Hammond's submission was really that there was no point in the Commission going into past events when these proceedings were afoot; that Mr Devany having been now dismissed, any earlier proceedings in respect of an earlier dismissal would be nugatory.

Mr Hammond submitted that the matter was not one of public interest because the type of offence was regarded as meriting only a minor penalty. That would not on its own determine the matter, in our view.

This matter was plainly one where the question before the Full Bench was not moot. A question existed as to whether an event earlier in time resulted in the unfair dismissal or not of Mr Devany. If Mr Devany were fairly dismissed on 10 April 1996, then he was no longer employed as at 8 October 1996 or as at 29 October 1996. Accordingly, that dismissal and any proceedings relating to it would be mere nullities.

The notice of appeal herein was filed on 31 May 1996 and the appeal was first listed for hearing on 5 August 1996. It was then and remains a practical matter in issue between the parties and one which should be heard and determined.

The respondent's application was therefore dismissed for those reasons, and Mr Hammond, and through him the respondent, withdrew from the proceedings. The appellant's case was therefore made in the absence of the respondent.

BACKGROUND

The respondent's member, Mr Devany, had been employed by the appellant at its mine site at St Ives Gold Mine at Kambalda in this State. He in fact worked in the Junction Mine, at Kambalda. He had worked for the appellant for slightly under four years and lived in the single persons quarters on the mine site at Kambalda. The single persons quarters are located on a mining lease.

In February 1996, a police officer, First Class Constable Garry Allen Watson, found a vehicle registration plate on the roadside in the Kambalda area. Having ascertained the name and address of the vehicle owner he went to the single persons quarters on Monday, 26 February 1996. He knocked on the front door and after several minutes Mr Devany opened the door. Constable Watson explained that he was returning the registration plate which he had found. Mr Devany and he then walked to Mr Devany's vehicle where Mr Devany attached the registration plate to his vehicle. Constable Watson then left.

However, when Constable Watson returned to the Kambalda police station he reported to the Sergeant in Charge that he had noticed a strong smell of cannabis smoke when Mr Devany opened the door of his quarters, and that he had also noticed the same smell on Mr Devany's clothes. The Sergeant in Charge suggested that he obtain a search warrant and return to the premises at a later date.

On 14 March 1996, Senior Constable George Peter Miocevich and Constable Watson arrived at Mr Devany's premises to execute the warrant. They executed it, and, in the course of their search, found approximately two grams of cannabis under a bed on which Mr Devany was sitting. When asked, Mr Devany said that the cannabis was in his possession and he was advised by Senior Constable Miocevich that he would be proceeded against on summons for being in possession of cannabis. He was subsequently served with a summons on 21 March 1997.

On 27 March 1996, Mr Devany pleaded guilty to the charge before two Justices of the Peace in the Court of Petty Sessions at Kambalda. He was duly convicted and fined $150.00.

Subsequently, members of management of Western Mining Corporation Limited (the appellant herein) at the St Ives Gold Mining operation became aware of Mr Devany's conviction.

On 9 April 1996, they conducted an investigation which included interviews on 9 April 1996 and 10 April 1996 with Mr Devany and with Mr Deamer, a site union representative, present on both occasions. The interviews were conducted by Ms Jann McClelland and Mr Brian Baird Hamilton Dawes, employees of the appellant. Mr Dawes was the manager of underground mining for St Ives Gold Mine at Kambalda. Mr Dawes had discussions about the matter with Mr Seamus Gerard Martin French, employed by Western Mining Corporation Limited as resident manager of St Ives Gold Mine. At the conclusion of the meeting, Mr Dawes told Mr Devany that he would review his continued employment.

On 10 April 1996, Mr Devany's contract of employment was terminated "... as a result of you possessing an illegal substance on Company property" (see page 25 of the appeal book (hereinafter referred to as "AB")). On the same day, Mr Geoffrey R Fricker, the acting human resources manager for St Ives Gold Mines, wrote to Mr Devany requiring him to vacate his room at the single persons quarters by 4.00 pm on 11 April 1996 "Because you have been charged with possessing an illegal substance in your living quarters".

It should be made clear that Mr Devany informed Mr Dawes and Ms McClelland that the cannabis was not his, and that therefore he was not guilty of the offence to which he had pleaded guilty.

The evidence led before the Commission at first instance was that the cannabis belonged to a Mr Berry, that Mr Devany did not use cannabis, that he did not possess it, and he called evidence from a Mr X to corroborate this. There was evidence from the police officers concerned that he had admitted using the cannabis and that he was, in fact, concerned about his employment if he were convicted of possession of cannabis. This was denied in evidence by Mr Devany.

Following upon Mr Devany's dismissal, there was a strike by 250 employees of the appellant, and this application was then made.

REASONS FOR DECISION OF THE COMMISSION AT FIRST INSTANCE

The Commission at first instance heard evidence from a number of witnesses. These included Mr Marc Terrence Devany, Mr Gary Walton, who was present when the search warrant was executed, a Mr X, who was also present, and, for the respondent, Senior Constable George Peter Miocevich, First Class Constable Garry Allen Watson, First Class Constable Ross Leslie Eastman, Mr Brian Baird Hamilton Dawes and Mr Seamus Gerard Martin French.

The Commission made a number of findings and these were as follows—

(1) Mr Devany was charged with possession of cannabis and pleaded guilty to that charge and was convicted and fined $150.00 with $98.00 costs.

(2) Mr Devany at the time when the premises were searched agreed that the cannabis belonged to him.

(3) When the police officers served him with the summons he was advised that he could enter no plea and that the case would then be heard in Kalgoorlie. Indeed, the evidence of the two police officers was that if convicted he would "get a record".

(4) At court, Mr Devany pleaded guilty to the charge and although he sought that no conviction be recorded, the Justices of the Peace when on to convict.

(5) After his conviction, Mr Devany worked some shifts before he was stood down on full pay.

(6) At the investigation conducted by Mr Dawes on 9 April 1996, Mr Devany became aware for the first time of how seriously Western Mining Corporation Limited viewed his conviction for possession of cannabis at the single persons quarters on a mining lease.

(7) Mr Devany stated for the first time that the cannabis was not his, but he did not say to whom it belonged, nor was he asked whether he used it.

(8) Neither Mr Dawes nor Mr French further investigated or caused to be investigated Mr Devany's claim in paragraph (6) above, and the decision of Mr French to terminate his services was taken without such investigation.

(9) At the hearing before the Commission, sworn evidence was given by Mr X that the cannabis belonged to a Mr Berry. "This was the first occasion that such specific information was made known to the respondent."

(10) The Commission said that he regarded Mr X's evidence with considerable caution.

(11) (a) The investigation by Mr Dawes did not afford Mr Devany procedural fairness.

(b) Mr Dawes and Mr French held the firm view that Mr Devany's plea of guilty and subsequent conviction required nothing further of them, other than to determine the industrial penalty.

(c) Mr French, who was to make the decision after receiving Mr Dawes report, did not give Mr Devany the opportunity to be heard personally by him before Mr French reached his decision to terminate Mr Devany's services.

The Commission relied upon a decision of the President of the Industrial Court of South Australia (as he then was), Olsson J, in Laurie v Mount Gunson Mines Pty Ltd 48 SAIR 656-681. In that case, an employee was dismissed following conviction on a charge of possessing marijuana on a mine site. Olsson J, hearing an appeal from the Industrial Magistrate, was not able to acquaint possession with use. There had been a prescription at the site in that case upon the use of the drug at the mine site, but there was no evidence that possession was prescribed. Olsson J, whose judgment was quoted in a great deal of detail by the Commission at first instance, held that summary dismissal could only be justified on one of two alternative bases—

(a) that the appellant's conduct amounted to such a breach of his conditions of employment that termination was justified in accordance with the contract of employment, or

(b) that it was such as to fall within the common law principles justifying summary dismissal.

Olsson J held that mere covert possession of the drug was not a breach of the appellant's conditions of service. Secondly, His Honour was unable to find that possession of the drug struck at an essential element in the contract of service. His Honour also held that, by its action in dismissing without even affording the appellant an opportunity of explaining himself, the respondent effectively denied basic justice to the appellant and the opportunity of knowing and assessing the full circumstances. His Honour went on to say that mere covert possession of the drug could not, in any sense, be said to constitute a flagrant disregard of the company policy.

Having examined, inter alia, those observations of His Honour, the Commission at first instance found that Mr Devany had not been established as being a user of cannabis, nor had it been established that Mr Devany either had or was likely to attend work under the influence of cannabis.

Further, the Commission held that since Mr Devany had worked four shifts after his conviction, that the assumption made by Mr French that possession of cannabis leads to a reasonable conclusion that the possessor is a user of the drug from time to time and also that the person had or would attend work under the influence of the drug was not sustainable on the evidence. With respect, that conclusion is a non-sequitur. All that it establishes is that Mr Devany attended work. There is no evidence as to when it was discovered that he had pleaded guilty to possession of a drug. There is no evidence that he either was or was not under the influence of the drug. There was understandably no attempt to discover that. The Commission therefore concluded that Mr Devany was unfairly dismissed.

GROUNDS OF APPEAL, ISSUES AND CONCLUSIONS

A fundamental complaint upon the grounds of appeal was that the Commission at first instance failed to make a number of findings.

Firstly, it was alleged that the Commission failed to make a finding that it accepted the evidence of Senior Constable Miocevich and Constable Watson, rather than that of Mr Devany or vice versa. It was also alleged, to summarise it, that, having regard to unchallenged evidence and to the evidence of Senior Constable Miocevich, Constable Eastman and Constable Watson, the Commission should have found that Mr Devany was a user of cannabis. It was certainly the evidence of Senior Constable Miocevich, Constable Watson and Constable Eastman that Mr Devany admitted that he used cannabis. In the case of Constable Eastman, he gave evidence, which was accepted by the Commission at first instance, that Mr Devany admitted possession of the cannabis and said that it was for his own use. However, Mr Devany, in evidence, denied this.

By the second substantial part of the grounds, it is alleged that the Commission at first instance had failed to give adequate weight to the evidence of Constable Watson, Senior Constable Miocevich, Constable Eastman and Mr X that Mr Devany had expressed concerns about the effect of a conviction for possession of cannabis. The Commission, it was submitted, had failed to find in summary that Mr Devany knew or ought to have known that a conviction for possession of cannabis would affect his employment with the appellant.

The third main head of the grounds of appeal revolved around the appellant submitting that the Full Bench find that the Commission at first instance should have drawn an inference that Mr Berry's evidence would not assist the respondent's case, pursuant to the rule in Jones v Dunkel and Another [1958-1959] 101 CLR 298 (HC).

The fourth main head of the grounds of appeal was directed to challenging the finding that there had been a denial of procedural fairness to Mr Devany and that any such denial, even if it had occurred, might render the dismissal unfair.

The next group of grounds related to the test to be applied. This group of grounds was directed to the findings that it was necessary for the appellant to prove that Mr Devany was a user of cannabis and that he had or was likely to attend the workplace under the influence of cannabis and to the Commission at first instance holding that Laurie v Mount Gunson Mines Pty Ltd (op cit) represents the law in Western Australia.

It was also submitted that the Commission at first instance had erred in that it failed to find that the appellant could rely on Mr Devany's plea of guilty to the charge of possessing cannabis.

This group of grounds must be approached on the basis that the Commission found that Mr Devany had said that when the cannabis was discovered in the single persons quarters, "It's mine".

The Commission at first instance accepted the evidence of Mr Walton and Senior Constable Miocevich and Constable Watson that that is what he said. The Commission also accepted the evidence of Constable Eastman that Mr Devany readily admitted in the Kambalda Court of Petty Sessions that the cannabis was for his own use.

The Commission seems quite clearly to have accepted that Mr Devany was in possession of the cannabis (see page 18 (AB)), but not that he was a user, although it had earlier decided that it accepted the evidence of Constable Eastman that he admitted that he was a user.

The Commission applied the decision in Laurie v Mount Gunson Mines Pty Ltd (op cit), as we have said.

A number of matters of law are apposite to the determination of this matter.

Firstly, misconduct after hours on work premises or in accommodation provided by the employer may, if sufficiently serious, justify summary dismissal (see North Australian Workers' Union v Newcastle Protective Coating Pty Ltd (1971) 13 AILR para 603 and AWU (WA Branch) v Goldsworthy Mining Ltd (1978) 20 AILR para 259(8) per Martin C).

In this case, Mr Devany was convicted of a criminal offence upon his own plea of guilty. The crime was the possession of a prohibited drug, namely cannabis. That act of possession occurred on a mining lease, which seems to have been accepted as being on a mine for the purposes of the Mines Safety and Inspection Act 1994 (as amended) and the Mines Safety and Inspection Regulations 1995. It is also an offence under regulation 4.9(3) of the Mines Safety and Inspection Regulations 1995 to possess "deleterious drugs" in or on a mine. The term "deleterious drugs" is not defined for the purposes of the Regulations. Regulation 4.7, however, reads as follows—

"4.7. (1) A person (whether or not an employee) must not be in or on any mine while the person is adversely affected by intoxicating liquor or drugs.

Penalty: See regulation 17.1.

(2) The principal employer at, or the manager or supervisor of, a mine may direct an employee

reporting for duty to immediately leave the mine if in the opinion of the principal employer, manager or supervisor the employee is adversely affected by intoxicating liquor or drugs.

(3) An employee must not refuse or fail to comply with a direction given under subregulation (2).

Penalty: See regulation 17.1.

(4) A person must not, without the knowledge and permission of the manager of the mine—

(a) have any intoxicating liquor or deleterious drug in his or her possession in or on a mine; or

(b) consume any intoxicating liquor or deleterious drug while in or on a mine.

Penalty: See regulation 17.1."

Regulation 4.9(3) reads as follows—

"(3) Intoxicating liquor or deleterious drugs shall not be in or about any mine or be taken by any person on to or into any mine, except with the knowledge and permission of the Manager, and any person having intoxicating liquor or deleterious drugs in his possession while in or on the mine, without such permission, is guilty of an offence."

"Mine" is defined in the Mines Safety and Inspection Act 1994 (as amended) as follows—

" "mine" means a place at which mining operations are carried on and, where mining operations are being carried on in conjunction with one another at 2 or more places, those places are to be taken to constitute one mine unless the State mining engineer notifies the principal employer in writing otherwise in accordance with subsection (3); and **"to mine"** includes to carry on any manner or method of mining operations;"

The reason for the dismissal was the possession of an illegal substance. That was how it was expressed in the formal notice. Cannabis is an illegal substance because its possession is forbidden by the Misuse of Drugs Act 1981 (as amended) and a penalty applies for its possession. The dismissal was said not to be a summary dismissal, but, in fact, it was.

In Laurie v Mount Gunson Mines Pty Ltd (op cit) Olsson J held that the summary dismissal of the appellant could only have been justified upon one of two grounds. In that case, His Honour held that the mere covert possession of a drug was not a breach of the appellant's conditions of service. Equally, His Honour held that it was difficult to see how even upon the view of the learned Magistrate's findings most favourable to the respondent it could be said that the covert possession of a drug struck at an essential element in the contract. His Honour went on to place some weight upon the fact that the appellant had been effectively denied "natural justice" because the appellant had been dismissed without an opportunity to explain himself. His Honour failed to see how mere covert possession could, on any basis, have properly founded ordinary dismissal on notice, let alone summary dismissal.

The Commission at first instance in this case found that it had simply not been "demonstrated" that Mr Devany was a user of cannabis or that he either had or was likely to "attend for" work under the influence of cannabis.

In this case, there was evidence, not contradicted, that an alcohol and drug awareness program had been conducted on each of the mines, including the Junction Mine where Mr Devany was employed, on two occasions. On all the notice boards on 11 February 1996 a bulletin referring to the Mines Safety and Inspection Regulations 1995 reference to drug and alcohol use was posted.

Mr French decided to dismiss Mr Devany because he pleaded guilty to possession on the company's mining lease, and because if cannabis is present there is potential consumption. "That risk and the risk to the safety of all my employees was a risk I could not ignore. I have a duty of care to all my employees. The risk was made aware to me; I had to act on it."

This duty of care, Mr French said in evidence, existed under the Mines Safety and Inspection Regulations 1995 because he was the registered manager of the St Ives Gold Mine and it was his duty of care in that capacity and as an employer to act. The duty of care extended to the dismissal of employees who possessed a drug which might be used and might render the user a danger at or on the mine. That is how we read his evidence.

There are a number of questions which arise.

What reliance could be placed on the conviction? Both the Commission and the employer were entitled to place considerable weight on the conviction, and, indeed, it was prima facie evidence that Mr Devany had committed the offence (see Mickelberg and Another v Director of Perth Mint [1986] WAR 365 (FC-SC)). However, evidence could be adduced seeking to rebut that evidence.

The Commission at first instance accepted the evidence of the police, however, that Mr Devany had possession of cannabis and admitted that it was for his own use, although the Commission's finding later was that it had not been proven that it was for his own use. The Commission, as a matter of unchallenged fact, accepted that Mr Devany was in possession of the cannabis (see page 8 (AB) and the Commission's implicit acceptance of this fact at pages 17-18 (AB)). The question is whether possession, which was the substantive final and formal reason given for the dismissal, was sufficient. Firstly, that possession constituted a crime, being an offence under the Misuse of Drugs Act 1981 (as amended). Secondly, this occurred on a mining lease, at or on a mine. Thirdly, it occurred in accommodation provided by Mr Devany's employer. Fourthly, the possession of cannabis was misconduct after hours in accommodation provided by an employer (see AWU (WA Branch) v Goldsworthy Mining Ltd (op cit)).

As to whether the commission of a crime constitutes sufficient grounds for summary dismissal, it is fair to say that it does so where the circumstances warrant it. Factors to be considered are the circumstances surrounding the commission of a crime, its impact upon the employee's business and its effect on the employee in carrying out his employment duty. The commission of a crime in the course of employment will frequently justify dismissal as might the commission of a crime away from the employment situation. For example, in an area where good faith and honesty was important, such as a bank official, a crime committed outside employment hours and away from the employer's place of business may nevertheless justify instant dismissal if it casts doubts upon the employee's honesty. Thus, a bank official convicted of a crime involving fraud or stealing would be liable to instant dismissal because the commission of that crime would be inconsistent with his employment situation (see Australian Labour Law Reporter, volume 1, para 2071, and see, too, Hospital Employees' Federation of Australia v Western Hospital (1991) 33 AILR para 249, which is a case factually distinguishable from this case, but which nevertheless deals with the question of a crime having been detected and having been committed by an employee). We would also add that in finding or accepting that Mr Devany was in possession, the Commission at first instance accepted that Mr Devany had committed the crime with which he was charged.

Under the Misuse of Drugs Act 1981 (as amended), s.6, a person who has in his possession a prohibited drug commits an offence. Cannabis or cannabis resin or any other cannabis derivative is a prohibited drug under that Act (see Schedule 1). There is no reference to the term "deleterious drug" in that Act. (It would seem to be a term recognised in some legislation (see McAvoy v Gray [1946] VLR 442 (SC))).

Under the Poisons Act 1964 (as amended), there is no reference to "deleterious drugs". Under that Act, however, "poison" is defined to mean any substance included in a Schedule. "Schedule" is defined to mean a Schedule in Appendix A to the Act. Schedule 9 is a Schedule in Appendix A to the Act. Schedule 9 refers, inter alia, to cannabis and cannabis oil. Cannabis or cannabis resin, since it is included in Schedule 9, is a drug of addiction, as that is defined in the Poisons Act 1964 (as amended). Thus, if cannabis and cannabis resin are prescribed as poisons and as drugs of addiction in the Poisons Act 1964 (as amended), it would seem to us that they ought properly to be regarded as deleterious drugs for the purposes of the Mines Safety and Inspection Act 1994 (as amended).

What therefore occurred was that the Commission at first instance found that it was necessary to prove that Mr Devany

had the drug for his own use and had used it, in order to establish that the dismissal was fair. It seems to us that, if, contrary to the law, Mr Devany had a forbidden substance, namely a prohibited drug, in his possession on company premises at or on a mine, then it was not necessary to prove that he intended to use it. Indeed, it was a fair inference, on the balance of probabilities anyway, that he did intend to use it if he possessed it. We would draw such an inference (see Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC)). Alternatively, the possession might have been open to the inference by the Commission at first instance that Mr Devany proposed to sell or supply the drug. However, what has occurred is that Mr Devany was found by the Commission to have possessed a drug of addiction on a mining site. That possession was contrary to the Misuse of Drugs Act 1981 (as amended) and contrary to the Mines Safety and Inspection Regulations 1995. He also pleaded guilty to a crime committed by that act.

The prohibition of the regulations upon drugs had been publicised to employees of the appellant before Mr Devany was found to be in possession.

Further, the presence of cannabis on one of the mining leases of the appellant might correctly have been found to have its own potential for consumption and intoxication and to have created a risk to the safety of Mr Devany and other employees of the appellant, the inference which we have said was able to be drawn. It was therefore not necessary to find that Mr Devany was a user of cannabis and that he had or was likely to attend for work under the influence of cannabis. The appellant had, at all material times, a duty of care to its employees, including Mr Devany, to take reasonable care for his safety and well-being. Thus, further and alternatively, the possession of such a drug might be rightly found to have constituted a risk to safety were it used. If it were possessed, it was likely to be used. That, it is fair to say, is what the Mines Safety and Inspection Regulations 1995 contemplate. We would not therefore regard Laurie v Mount Gunson Mines Pty Ltd (op cit) as authority which we would apply to this case.

The Commission at first instance did not err in finding that there was a requirement that Mr Devany be afforded procedural fairness before he was dismissed. Failure to accord procedural fairness is one factor to take into account in deciding whether there has been an unfair dismissal (see Shire of Esperance v Mouritz 71 WAIG 891 (IAC) per Kennedy J at page 895 where he said)—

> "In my opinion, any breach of the rules of natural justice was a relevant circumstance in the determination of the critical question as to whether the dismissal was harsh or unjust. 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—see The Law of Employment, Macken, McCarry & Sappideen, 3rd ed, 277-278, and the authorities there cited. In some cases, this can be a most important circumstance. But in a case such as the present, no question of the invalidity of a decision, as such, falls for determination. The case does not turn simply upon the respective legal rights of the parties."

Whether the dismissal is harsh or unfair will depend on all of the circumstances, including substantial and procedural unfairness.

It is quite clear that Mr Devany understood the allegations against him, that he attended with a union representative on 9 April 1996 and 10 April 1996 whilst the matter was being investigated, that he had the opportunity to fully appreciate the case against him, and, indeed, responded to that case. In any event, no further investigation would or could have affected the belief that he had possessed cannabis and the fact accepted by the Commission at first instance that he had. Mr Devany did not volunteer any information relating to Mr X or Mr Berry, which it was open to him to do. There was no denial of procedural fairness (see Bi-Lo Pty Ltd v Hooper [1992] 53 IR 224 at 229-230). (That was a decision of the Industrial Commission of South Australia in Full Commission consisting of Stanley P, Cawthorne CP and Stevens C). The Commission said at page 229—

> "Where the dismissal is based upon the alleged misconduct of the employee, the employer will satisfy the evidentiary onus which is cast upon it if it demonstrates that insofar as was within its power, before dismissing the employee, it conducted as full and extensive investigation into all of the relevant matters surrounding the alleged misconduct as was reasonable in the circumstances; it gave the employee every reasonable opportunity and sufficient time to answer all allegations and respond thereto; and that having done those things the employer honestly and genuinely believed and had reasonable grounds for believing on the information available at that time that the employee was guilty of the misconduct alleged; and that, taking into account any mitigating circumstances either associated with the misconduct or the employee's work record, such misconduct justified dismissal. A failure to satisfactorily establish any of those matters will probably render the dismissal harsh, unjust or unreasonable."

(See also Byrne and Frew v Australian Airlines Ltd 120 ALR 274 (FC) at page 328 per Gray J).

We would therefore, based on the finding of the Commission at first instance that Mr Devany was in possession of a prohibited drug and a deleterious drug on a mining lease, and taking into account that he had committed a crime and could have been charged under the Mines Safety and Inspection Regulations 1995, and that the drug was a deleterious one, that he was not denied procedural fairness, that he committed a crime which involved the likelihood of use by him or others at the place where they worked, that possession of the same was forbidden by law at or on a mine, that that was the law was drawn to the attention of all of the employees at St Ives Gold Mines, all led us to the conclusion that the crime of possession itself was enough to render the dismissal fair. However, the possession itself, for all those reasons, and having regard to all of the circumstances of the dismissal, was sufficient to render the dismissal fair ((ie) not harsh, oppressive or unfair, not substantively or procedurally unfair, and constituted a valid reason for dismissal).

Having regard to the Commission's finding as to possession, there is no need to consider the effect of Mr Devany's evidence that Mr Berry had possession and of Jones v Dunkel and Another (HC) (op cit).

Accordingly, it cannot be said that the dismissal was unfair.

Were we wrong in that, we would find that the Commission at first instance failed to determine whether there was sufficient evidence on which to find that the cannabis was for his own use and that Mr Devany was a user of cannabis, when there was evidence of admissions to that effect, there was evidence to that effect from Mr Walton, there was evidence of Mr Devany's admission in court, and evidence of Mr Dawes.

It might, of course, be said that the Commission at first instance, having made a finding of fact contrary to the evidence of Mr Devany, namely that he had admitted possessing and admitted using and was in possession of cannabis, should also have found that it preferred the evidence of the police officers that Mr Devany had the drug for his own use. Instead, the Commission, for no adequate expressed reason, found that the fact that Mr Devany had the cannabis for his own use was not proved. However, it did not. Further, the Commission did not accept Mr X's evidence, saying that that evidence had to be treated with caution.

We would therefore, in that case, remit the matter back to the Commission at first instance to make that finding, and then, having regard to that finding and these reasons, to determine whether the dismissal was unfair.

However, that is not the conclusion which we have reached. The conclusion which we have reached is that the Commission at first instance erred for the reasons which we have set out above. The Commission having erred and its discretion having miscarried, as contemplated by the test in House v The King [1936] 55 CLR 499 (HC), it is open to us to substitute our decision for that of the Commission at first instance. We find, as we have said above, that it was open to the Commission to find and on the facts and for the reasons which we referred to above. We would therefore uphold the appeal and vary the decision at first instance by substituting an order dismissing the application for the order made by the Commission at first instance.

COMMISSIONER S A CAWLEY: The appellant's submission that the Full Bench should intervene in this matter

can be summarised as being warranted by the Commissioner at first instance erring in law and fact in his findings or lack of findings on the evidence before him, erring in fact and law on the application of the principles of natural justice in this case and erring in his reliance on the decision of the Industrial Court of South Australia in Laurie v Mt Gunson Mines Pty Ltd (48 SAIR 656-681) when that case can be distinguished on the facts and is not binding anyway.

The decision being appealed against was made in the case of a claim by The Australian Workers' Union, West Australian Branch, Industrial Union of Workers that a member, Mr Marc Devany, had been unfairly dismissed by his employer Western Mining Corporation Limited from the position as a diesel operator at the St Ives Junction Mine Kambalda. The decision to dismiss him was taken after some cannabis had been found in the single person's quarters occupied by Devany as a consequence of his employment and he had pleased guilty to a charge of possessing cannabis in the Court of Petty Sessions in Kambalda on 27 March 1996, and was convicted on that charge.

An appeal body such as the Full Bench must be very mindful of the advantage at first instance of observing witnesses in the course of giving evidence and should only interfere on appeal when it is clearly demonstrated that significant findings of fact (or an absence of them) are palpably wrong or can not reasonably be sustained on the evidence.

The submissions by the appellant were exhaustive in respect of each of its contentions and the Full Bench was taken to the transcript of hearing in significant detail. Having reviewed that in the context of the reasons for decision I have concluded that this is such a case and largely for reasons expressed by the President. The crux of the case goes to the evidence given in relation to the finding of cannabis in Devany's quarters and reactions then. In this respect the Commissioner at first instance relied heavily on the at times contradictory evidence of Devany and Witness X and appeared to place no or insufficient weight on the consistent and contrary evidence of other witnesses in arriving at his findings. And the Commissioner's findings as to employer's onus are in error and not in accordance with the evidence. The appeal should be upheld and the order quashed.

THE PRESIDENT: For those reasons, the appeal is upheld and the decision at first instance varied by substituting an order dismissing the application for the order made by the Commission at first instance.

Order accordingly

Appearances: Mr A J Power (of Counsel), by leave, on behalf of the appellant.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Mining Corporation Limited
Appellant

and

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers
Respondent.

No 800 of 1996.

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

Order.

This matter having come on for hearing before the Full Bench on the 2nd day of December 1996, the 3rd day of December 1996 and the 17th day of February 1997, and having heard Mr A J Power (of Counsel), by leave, on behalf of the appellant and there being no appearance by or on behalf of the respondent organisation, the respondent organisation through its Counsel on the 2nd day of December 1996 having withdrawn from the proceedings, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 10th day of April 1997 wherein it was found that the appeal should be upheld, it is this day, the 10th day of April 1997, ordered and directed as follows—

(1) THAT appeal No 800 of 1996 be and is hereby upheld.

(2) THAT the decision of the Commission in application No CR 117 of 1996 made on the 8th day of May 1996 be and is hereby varied by substituting for the last four lines of the same the following—

"THAT application No CR 117 of 1996 be and is hereby dismissed."

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Mining Corporation Limited
Appellant

and

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers
Respondent.

No 800 of 1996.

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

10 April 1997.

Order.

This matter having come on for hearing before the Full Bench on the 2nd day of December 1996, and having heard Mr A J Power (of Counsel), by leave, on behalf of the appellant and Mr J Hammond (of Counsel), by leave, on behalf of the respondent organisation, and the respondent organisation having made an application pursuant to s.27(1)(a)(ii) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the Full Bench having heard the parties herein upon that application, and reasons for decision being delivered on the 10th day of April 1997, it is this day, the 10th day of April 1997, ordered that the application by the respondent organisation pursuant to s.27(1)(a)(ii) of the Act for dismissal of the appeal herein be and is hereby dismissed.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Mining Corporation Limited
Appellant.

and

The Australian Workers' Union, West Australian Branch
Industrial Union of Workers
Respondent.

No 800 of 1996.

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

3 September 1996.

Order.

This matter having come on for hearing before the Full Bench on the 5th day of August 1996, and having heard Mr A J Power

(of Counsel), by leave, and with him Mr G S Gishubl (of Counsel), by leave, on behalf of the appellant and Mr J Hammond (of Counsel), by leave, on behalf of the respondent, and the appellant having sought leave to have the hearing and determination of appeal No 800 of 1996 adjourned, and the respondent having consented to such an adjournment, it is this day, the 3rd day of September 1996, ordered, by consent, that the hearing and determination of appeal No 800 of 1996 be and is hereby adjourned sine die.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association Incorporated
Appellant

and

Perth Theatre Trust
Respondent.

No 1847 of 1996.

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

7 April 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Public Service Arbitrator (hereinafter referred to as "the Arbitrator") made on 29 November 1996 in application No PSAC 29 of 1995, and the appeal is properly brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). That decision, formal parts omitted, reads as follows (see page 16 of the appeal book (hereinafter referred to as "AB"))—

> "THAT the claims made by the applicant, the purpose of which are to cause Ms N.M. Bourne to either be recognised as occupying, or have her occupy, the position of Manager, Perth Concert Hall uninterrupted from 1992 to the present date, and that for the period therein that she has not been paid the equivalent of the commuted overtime allowance associated with that position she be so paid, be and are hereby dismissed."

That decision is now appealed against on the following amended grounds—

> "1. The learned Public Service Arbitrator erred in law in holding that the CSA's application PSAC 29 of 1995, insofar as it revives the issues raised by its application PSAC 21 of 1993, constitutes an abuse of process or founds an estoppel in that—
>
> (i) the issue of abuse of process never having been raised in the hearing, the Public Service Arbitrator founding his decision on same denied the Appellant natural justice and breached s26(3) of the Industrial Relations Act 1979;
>
> (ii) he received evidence neither under oath nor affirmation in breach of s33(1)(e) of the Industrial Relations Act 1979;
>
> (iii) the findings made do not in any event justify a legal conclusion of abuse of process or estoppel.
>
> 2. The learned Public Service Arbitrator ought to have held that as—
>
> (i) The merits of PSAC 21 of 1993 were never heard,
>
> (ii) No substantive agreement on PSAC 21 of 1993 was reached,
>
> (iii) A dismissal of the claims would operate an injustice on the relevant member of the CSA,
>
> (iv) No other substantive occupant had been placed in the position Manager, Perth Concert Hall, and there being no other evidence of an injustice operating against the Perth Theatre Trust,
>
> then notwithstanding the discontinuance of PSAC 21 of 1993, the within application should be heard on its merit.
>
> 3. The Appellant respectfully requests that the decision of the learned Public Service Arbitrator be quashed and the matter be remitted to the Public Service Arbitrator for a substantive hearing."

Leave was given to file and serve appeal books out of time.

BACKGROUND

The background to the matter was this. The appellant's member, and an applicant at first instance, Ms Naomi Margaret Bourne, was a government officer who, in October 1994, made application to the Western Australian Industrial Relations Commission in application No 1058 of 1994 for orders to remedy a situation created by her employer, the Perth Theatre Trust. That application was lodged with the Commission on 28 October 1994 and sought the following orders—

> "A. Perth Theatre Trust do transfer Ms Bourne into the position, Manager, Perth Concert Hall effective from 7th October, 1994
>
> B. A declaration that the registration of Ms Bourne as a redeployee is invalid
>
> C. In the alternative to B., a declaration that the position of Manager Perth Concert Hall was, on and after 7th October 1994, a suitable office, post or position, or suitable employment for Ms Bourne.
>
> D. Any other orders the Commission thinks proper."

The appellant sought a hearing pursuant to s.29(1)(b) of the Act, which would be a hearing by the Commission, not by the Arbitrator, and alleged that the application was made on the grounds "As per section 95(3) of the Public Sector Management Act 1994".

The application, summarised, complained that Ms Bourne was employed by the respondent, but occupied no substantive position, and that she was not transferred to the position of Venue Manager of the Perth Concert Hall on or after 7 October 1994, but was on or about 20 October 1994, and contrary to regulation 11(1) of the Public Sector Management (Redeployment and Redundancy) Regulations 1994, the subject of an application by the respondent to register her for redeployment.

On 1 June 1995, the appellant, by application made to the Arbitrator (No PSAC 29 of 1995), also made application for orders relating to Ms Bourne's employment. The application, as amended by the Arbitrator, reads as follows—

> "The Civil Service Association of Western Australia (Inc) (CSA) requests the assistance of the Industrial Relations Commission to conciliate a dispute between the Perth Theatre Trust and Ms Naomi Bourne a member of the CSA.
>
> The CSA claims—
>
> 1. (a) Without the authority to do so, the General Manager purported to create the position of Executive Assistant (Policy).
>
> (b) The General Manager purported to transfer Ms Bourne to a position that has never existed.
>
> (c) The transfer is a nullity and Ms Bourne has never been removed from her substantive position of Venue Manager, Perth Concert Hall.
>
> 2. In the alternative—
>
> (a) A restructure of the Trust has seen Ms Bourne's position as Executive Assistant (Policy) within the Trust abolished.
>
> (b) The Trust purported to register Ms Bourne for redeployment under the Public Sector Management Act 1994 ("the Act") and Public Sector Management (Redeployment and Redundancy) Regulations 1994 ("the Regulations").
>
> (c) Application 1058 of 1994 to the Industrial Relations Commission calls into question the

validity of Ms Bourne's registration for redeployment, which Application ought to be heard contemporaneously with this Application.

(d) (i) Where Application 1058 of 1994 determines that Ms Bourne is not a registered employee, then Ms Bourne is now surplus to requirements and in accordance with the Human Resources Management Principles Regulating Organisational Restructuring and the Regulations, the Trust should transfer Ms Bourne on a "like to like" basis into suitable alternative employment within the Trust.

(ii) The position of Venue Manager, Perth Concert Hall, has no permanent occupant and is a position which is suitable alternative employment commensurate with Ms Bourne's qualifications, experience and competence.

(e) Where application 1058 determines that Ms Bourne is a registered employee, then the position Venue Manager, Perth Concert Hall, is a suitable office, post or position for the purpose of s94(6) of the Act and the Regulations.

(f) The Trust has refused to place Ms Bourne into this position.

(g) The General Manager purportedly reclassified the position Venue Manager, Perth Concert Hall, to Level 6 in or about March 1995, inter alia, in order to prevent Ms Bourne from being transferred into that position.

3. In the alternative—

(a) A restructure of the Trust following the appointment of Simon Dawkins as General Manager led to the creation of a new line of senior management (Directors) between the Trust Venue Managers (including Manager, Perth Concert Hall) and the General Manager.

(b) Notwithstanding the shift in responsibilities and duties, the General Manager created the position of Executive Assistant (Policy) as a direct lieutenant for the General Manager.

(c) The duties and responsibilities of the Executive Assistant (Policy) were never clearly defined and the JDF was both late and vague. The skills and experience of Ms Bourne were not appropriately utilised.

(d) The Vickery Report (March 1994) effectively denounced the creation of positions of Directors and Executive Assistant (Policy) was abolished October 1994.

(e) The General Manager has, since October 1994, refused to return Ms Bourne to the position of Manager, Perth Concert Hall notwithstanding—

(i) that the were no substantive reasons for Ms Bourne being taken from that position originally;

(ii) that her experience and skills make Ms Bourne the most suitable candidate

(iii) that the Trust's own policy statements dictate that permanent employees have priority over all others for vacant positions for which they are suited.

(f) In breach of the Act, the General Manager arranged for Ms Bourne to be seconded to LISWA.

(g) The General Manager purportedly registered Ms Bourne for redeployment as surplus to Trust requirements notwithstanding Ms Bourne's suitability for the vacant position of Venue Manager, Perth Concert Hall.

(h) The General Manager purportedly reclassified the position Manager, Perth Concert Hall, to Level 6 in or about February 1995 inter alia in order to prevent Ms Bourne from being transferred into that position.

(i) Having regard to equity, good conscience and the substantive merits of this case, the Commission ought to order the reinstatement of Ms Bourne.

The Applicant seeks the following orders—

A Leave be granted for representation of the parties by Legal Practitioners.

B The Trust may not advertise the position of Venue Manager, Perth Concert Hall, until the determination of this application.

C Application 1058 of 1994 be heard contemporaneously with this Application.

D Under paragraph 1, a declaration that Ms Bourne has since 1980 been and continues to be the occupier of the position of Venue Manager, Perth Concert Hall and entitled to those overtime allowances commensurate with that position.

E Under paragraph 2 or paragraph 3, Ms Bourne be transferred into that position of Venue Manager, Perth Concert Hall.

F Any order made as to the reclassification of the position Venue Manager, Perth Concert Hall shall not affect any person holding that position from seeking reclassification of that position after the date of these orders.

G Any other orders the Commission thinks proper."

SUBMISSIONS, ISSUES AND CONCLUSIONS

THE APPLICATIONS

On 29 June 1995, the Arbitrator conducted a conference, which was said to have been conducted pursuant to s.44 of the Act, but the dispute was not resolved at that conference. A further s.44 conference and a s.32 conference were then held. The matter was still not resolved.

The parties agreed that the two applications be heard together with the same member of the Commission sitting as Commissioner and Arbitrator.

Ms Bourne was, at least at the material time, a government officer. She had commenced employment with the respondent in the position of Venue Manager, Perth Concert Hall, in or about 1980. The position was then classified at level 4, but whilst occupied by Ms Bourne was reclassified as level 5. Ms Bourne was also paid a commuted overtime allowance in relation to the position.

On 24 December 1992, (by exhibit S1), Ms Bourne was informed by the respondent's General Manager that as of 11 January 1993 she would take up the position of Executive Assistant (Policy). This was apparently a new position. She was told that she would report directly to the General Manager in that position. The position was said in the letter to have been created at level 5. By the same letter, she was also informed that the 20 percent commuted overtime currently paid to her was attached to the position of Venue Manager, Perth Concert Hall, but did not make up a part of the terms and conditions under which she was individually employed by the respondent. Accordingly, any overtime worked in the position of Executive Assistant (Policy) would be subject to approval prior to it being worked, she was told in the letter.

The commuted overtime allowance was then reinstated until 14 January 1993 (exhibit S2).

There were then discussions between the respondent and the appellant which were not resolved.

The appellant then made application to the Arbitrator by application No PSAC 21 of 1993 (exhibit S4). This application was dated 30 April 1993. That application was also the subject of a conference before the Arbitrator, but was discontinued in February 1994 without being heard and determined. The particulars to the application read as follows (see page 84 (AB))—

"The Association claims the position of Manager, Perth Concert Hall, has been advertised (see Attachment A) contrary to Government policy.

Circular to Ministers No 4 of 1992 requires that all positions be advertised in the Public Service Notices in the first instance (see Attachment B).

Only when it has been established that the skills are not available within the Public Sector or in accordance with the prescribed exceptions, can a position be advertised externally. This has not been proved (see Attachment C).

Circular to Ministers No 4 of 1992 was further enhanced by the establishment of Circular to Chief Executive Officers No 7 of 1992, without change (see Attachment D).

The advertising of this position is in breach of understandings and agreements (in principle) with Government and DOPLAR (see Attachments El, E2 and E3).

The Trust's ability to advertise this position has occurred due to the transfer of the substantive occupant against their will.

This transfer was finalised with little consultation or input from the officer, or the Association.

The position to which the officer was transferred was newly created in January, 1993. When viewed as a whole, the salary and conditions of the new position are significantly less than those of the former office.

The Association, following a series of meetings, has been unsuccessful negotiating the officer's return to their former substantive position, believing that this transfer is unfair, harsh and unconscionable. The member further believes this action to be punitive to address some form of displeasure on behalf of management.

The Civil Service Association therefore seeks the recommendation of the Commission to achieve—

1. The withdrawal of the advertisement.
2. The return of Ms Naomi Bourne to her former office, being Manager, Perth Concert Hall.
3. All allowances which would have been received by Ms Bourne as Manager, Perth Concert Hall, be paid from the date of vacating that position, by way of compensation for the harsh treatment and stress caused to the officer."

The Arbitrator held (see pages 23-25 (AB)) that the Arbitrator, pursuant to s.80E(1), s.80E(5) and s.80G of the Act was empowered to retrospectively remedy a past "action or thing done".

The matter of estoppel was argued before the Arbitrator. The appellant took issue with the 1993 transfer of Ms Bourne, and the question of the overtime allowance, which were the subject of discussions between the parties at the conference convened by the Arbitrator in June 1993.

The respondent then heard nothing from the appellant until application No PSAC 29 of 1995 commenced in June 1995. The respondent's case was, therefore, that because the appellant did nothing in the period between June 1993 and June 1995, two years, this caused the respondent to believe that the matters of a changed employment position and the cessation of the commuted overtime allowance were not being pursued. Accordingly, the respondent would suffer detriment if the respondent were ordered to pay commuted overtime from January 1995 because the allowance was payable for work expected to be done, and the respondent had been deprived of the benefit of that work. Reliance was placed by the Arbitrator on the Commonwealth of Australia v Verwayen [1990] 170 CLR 394 (HC).

The Arbitrator decided that the respondent was entitled to conclude that the appellant had abandoned the matter, the subject of the 1993 application.

The Arbitrator also held that the appellant's current application (No PSAC 29 of 1995) revived the 1993 matters for "litigation". The Arbitrator also held that there was no statutory impediment to the application. However, the Arbitrator went on to hold that the appellant ought to be estopped from pursuing the matter.

The Arbitrator further held that the appellant's application, which revived issues raised by the 1993 application, constituted an abuse of process because it was an abuse of process that an application was made for the same intents and purposes as an earlier application by the same applicant which had been discontinued (see Stankovski v City of Stirling 73 WAIG 2076.

In the end, no order was made by the Arbitrator as such in relation to Ms Bourne's application.

The order appealed against was made by the Arbitrator, C B Parks, in relation to application No PSAC 29 of 1995, and not by Commissioner C B Parks in relation to application No 1058 of 1994.

The Arbitrator is, in fact, the Commission, constituted by an Arbitrator, appointed under Part IIA—Constituent Authorities, Division 2—Public Service Arbitrator and Appeal Boards of the Act.

Under s.80E of the Act, an a Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally.

The provisions of Part II, Division 2, apply to and in relation to the exercise of jurisdiction of the Commission, constituted by a Commissioner with any prescribed modifications or any necessary or appropriate modifications (see s.80G of the Act).

S.26 and s.27 of the Act therefore apply, inter alia.

ISSUES

This matter came before the Commission in unusual circumstances. Application No PSAC 21 of 1993 was made on 30 April 1993 by the appellant to the Arbitrator (see pages 83-84 (AB)) seeking a conference under s.44 of the Act, and naming the respondent to this appeal as respondent. Condensed, the application complained that Ms Bourne had been transferred from the office of Venue Manager, Perth Concert Hall, to a new office at a significantly less salary and conditions, and that the advertisement seeking to fill a vacancy in her old office was wrong. The application sought to have the advertisement withdrawn, her "return" to her old office of Venue Manager, Perth Concert Hall, and the payment of all allowances which she would have received had she remained in her old office, paid by way of compensation for what she had suffered.

That application was discontinued after a conference, as I have said. It was common ground between the parties that nothing occurred after the matter was discontinued in February 1994.

Then Ms Bourne lodged application No 1058 of 1994 to the Commission under s.29(1)(b) of the Act on 28 October 1994. That application, as I have illustrated, also sought orders transferring Ms Bourne into the position of Venue Manager, Perth Concert Hall, effective from 7 October 1994, that is retrospectively, a declaration that her registration as a redeployee was invalid, and other orders.

The application dismissed by the Arbitrator made by the appellant was application No PSAC 29 of 1995 and was made on 1 June 1995, some 16 months after the discontinuance of the first application concerned with Ms Bourne's transfer. That application recited some of the allegations made in application No 1058 of 1994, alleged a number of facts, including the findings of the Vickery Report of March 1994, and alleged the abolition of the position of Executive Assistant (Policy) in October 1994 (the position to which Ms Bourne had been purported to be transferred). The application also sought declarations that Ms Bourne was the "occupier" of the position of Venue Manager, Perth Concert Hall, since 1980 and entitled to overtime allowances commensurate with that position, as well as seeking an order that she be transferred to the office of Venue Manager, Perth Concert Hall.

A new and material matter of fact was that the office to which Ms Bourne was transferred was now alleged to have been abolished, and that she was alleged to have been registered as a redeployee. The Arbitrator took into account that there was originally inaction by the appellant in relation to the 1993 application after the June 1993 conference because it neither pursued matters directly with the respondent, nor by conciliation, nor by a hearing or determination by the Arbitrator, but discontinued it. The appellant did nothing further before Ms Bourne brought her application, which raised the new issue of redundancy and redeployment. After that, the appellant's application was not filed until seven months (not 12 months) after that of Ms Bourne.

For those reasons, the Arbitrator held that the respondent was entitled to conclude that the appellant had "abandoned the cause" of its 1993 application. The Arbitrator then held that the "1993 matters" had been revived "for litigation".

I must say that reading the first two paragraphs on page 28 (AB) together, I concluded that the Arbitrator had held that, whilst there was a detriment specifically related to the overtime, ruled the appellant was estopped from pursuing the application, No PSAC 29 of 1995, and, more particularly, its subject matter, something borne out by the order which was made and is now appealed against.

ESTOPPEL

That brings me to the question of whether the Arbitrator erred in finding that there was an estoppel. The res judicata and issue estoppel have been described in a number of cases, but if I may respectfully say so, have been well described by King CJ in South Australian Housing Trust v State Government Insurance Commission 51 SASR 1 at 18 (FC), where His Honour said—

> "The rules of law which regulate the circumstances in which a party is precluded from asserting facts in a subsequent action by reason of a prior judgment in another action are to be found in the branch of the law relating to estoppel by judgment. Where an action has been brought and judgment has been entered in that action, no other proceedings can thereafter be maintained on the same cause of action. This is the rule relating to res judicata or cause of action estoppel. A party is also precluded from setting up in subsequent proceedings a state of fact or law which has been determined in a contrary sense in other proceedings between the same parties or their privies, see generally Port of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589 at 597 per Gibbs CJ, Mason J and Aickin J. The appellant is not precluded by these rules from asserting in the present action a different version of the facts from that found in the other action, the cause of action and parties to the two actions being different."

It does not seem to have been in issue that estoppel could apply in an industrial tribunal. It has been held to be so in England in Barber v Staffordshire County Council [1996] 2 All ER 748 (CA). It is noteworthy, of course, that issue estoppel there applied where there had been a determination in a previous matter, and there was no determination in any previous matter in these proceedings.

The estoppel which applied was not issue estoppel or res judicata. That is because there was no judgment and no issue was decided.

What the Arbitrator found was that there was estoppel by conduct. The estoppel was held to be based on the discontinuance of one application, followed by an identical application after a period of some months when the appellant did nothing which might have indicated that the claim was being pursued. Indeed, the appellant had filed a notice of discontinuance which, at least at that time, indicated that the claim was not being pursued.

Indeed, as I understood the Arbitrator's finding, it was conduct which might have and did lead the respondent to the conclusion that the application would not be further pursued by the appellant.

Three elements are required to set up an estoppel and these are as follows—

(1) The party claiming the estoppel must have adopted an assumption as the basis of an omission or act (see Thompson v Palmer [1933] 49 CLR 507 at 547 (HC) per Dixon J) and Commonwealth of Australia v Verwayen (HC) (op cit) at page 413 per Mason CJ and at page 444 per Deane J).

(2) The claimant, upon the basis of the assumption, must have so acted or abstained from acting that a detriment would be suffered if the person against whom the estoppel is asserted is afterwards allowed to set up rights inconsistent with it (see Grundt and Others v Great Boulder Proprietary Gold Mines Ltd [1937] 59 CLR 641 (HC) per Dixon J at 674 and Commonwealth of Australia v Verwayen (HC) (op cit) at pages 413 at 444 per Mason CJ and Deane J respectively).

(3) The party against whom the estoppel is alleged must have played such a part in the adoption of or persistence in the assumption that freedom to act otherwise than in a manner consistent with it would be unfair or unjust (see Commonwealth of Australia v Verwayen (HC) (op cit) at page 444 per Deane J and Waltons Stores (Interstate) Ltd v Maher and Another [1987-1988] 164 CLR 387 at 404 (HC) per Mason CJ and Wilson J).

In Commonwealth of Australia v Verwayen (HC) (op cit) at page 444, Deane J described an estoppel thus—

> "Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party."

(See, generally, "The Laws of Australia", Volume 35.6, Part A, Division 6, and Part B).

A detriment must be established by the party claiming the estoppel since a claim for estoppel without detriment being demonstrated will fail (see, for example, Thompson v Palmer (HC) (op cit) and Hocking and Others v Western Australian Bank [1909] 9 CLR 738 (HC)).

An estoppel by express or implied representation must be by words or conduct, must be made by or on behalf of the person to be estopped, must arise from a representation which came to the notice of the claimant, must arise from a representation which must be believed and voluntary, and must be clear and unambiguous. Further, the representation must be such that a reasonable person would believe that it was intended to be acted upon.

The prima facie entitlement to relief based on the assumed state of affairs which one party is estopped from denying will be qualified in a case where such relief would exceed what would be justified by the requirements of conscientious conduct and would be unjust to the estopped party.

In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed (see per Deane J in Commonwealth of Australia v Verwayen (HC) (op cit) at page 444).

A central element of the doctrine of estoppel is that there must be proportionality between the remedy and the detriment which is its purpose to avoid. In this case, there was a representation by the filing of a notice of discontinuance and a further representation alleged to have arise from consequent inaction and silence. That, at best, could only, together with the inaction of the respondent, be reasonably understood to be a representation that no further action would occur. However, it could not reasonably be understood to be a representation by conduct express or implied that a new application might be made if circumstances changed or were alleged to have changed, as indeed they were alleged to have changed, by reason of the redundancy or redeployment.

There is a fundamental new ground of allegation (not in No PSAC 21 of 1993) based on the alleged abolition of the position of Executive Assistant (Policy) and the alleged registration for redeployment of Ms Bourne. It could not be covered by any express or implied representation, nor, in that respect, is it relevant that an application in relation to the same was made after the alleged date of redeployment registration, namely 20 October 1994 (see page 23 (AB)). Certainly, application No PSAC 29 of 1995 was made some eight months after the new alleged event occurred, and there is an unexplained delay. However, there was never a representation, at least in evidence, that no application would be made. In any event, to dismiss the application is to bring a lack of proportionality to the detriment, the detriment being that the appellant defend, if it intends to, the application and the remedy being the deprivation of the right of the appellant to seek and obtain a remedy for Ms Bourne. That remedy is out of proportion to the detriment. As to the relevance of Ms Bourne's application to that argument, nothing was said which would detract from that finding. That assumes that estoppel as a doctrine is available in these circumstances, and although it was not disputed in this case, it is something which I am not entirely persuaded is the case.

NOTICE OF DISCONTINUANCE

The discontinuance of the application alone unconditionally, as it occurred here, cannot be said to be a bar to a subsequent

application. Particularly is that so in this jurisdiction which contains objects such as s.6(b) and s.6(c) of the Act and a provision such as s.26(1)(a) and s.26(1)(c) of the Act. S.6(b) and s.6(c) read as follows—

"The principal objects of this Act are —

(a) ...

(b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes;

(c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;"

I would require to be persuaded that a bald discontinuance could act as a bar to a further application, and I have not been.

ABUSE OF PROCESS

The Arbitrator found that the application constituted an abuse of process because the application was made for the same intents and purposes as an earlier application, and he cited what Fielding C (as he then was) said in Stankovski v City of Stirling (op cit).

Even where the specific legal principles of estoppel by record or judgment do not preclude a party from relitigating issues which have been decided against parties in other proceedings most courts have power to prevent that litigation as an abuse of process (see South Australian Housing Trust v State Government Insurance Commission (FC) (op cit) per King J at page 18). Their His Honour said—

> "There can be no doubt that, quite apart from any specific legal rules, a court has power to prevent an abuse of its processes. This principle is referred to by Lord Diplock in Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at 536 as concerning "the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not consistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people". There are a number of instances in the books of this principle being utilised to prevent a party from relitigating issues which have been decided against that party in other proceedings, notwithstanding that such relitigation was not precluded by the rules relating to estoppel by judgment."

This Commission does not have inherent power to prevent that sort of abuse of process. What it does have is statutory power under s.27(1)(a) of the Act. Industrial tribunals, too, including this Commission, have often regarded undue delay as being a bar to an application (in this Commission under s.27(1)(a)). It seems to me that it would be a proper exercise of discretion, having regard to s.26(1)(a) and s.26(1)(c) and under s.27(1)(a) of the Act to prevent the misuse of the Commission's jurisdiction in a way which would be manifestly unfair to a party to "litigation" before it or would otherwise bring the administration of justice into disrepute among right thinking people (see Walton v Gardiner and Others [1993] 67 ALJR 485 (HC) where the High Court applied the dictum of Lord Diplock in Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at 536, applied by King CJ in South Australian Housing Trust v State Government Insurance Commission (FC) (op cit)).

The application before us in this appeal is not a matter which has been "relitigated", it not having in fact been litigated. The matter never got beyond the unresolved stage at conference. Application No PSAC 21 of 1993 was not settled at conference, nor was it heard on the merits. Application No PSAC 29 of 1995 relates, inter alia, to a significantly different allegation, namely the alleged redundancy of Ms Bourne. The dismissal of the claim, undetermined, might have a significantly unjust effect on the appellant's member. There is no evidence, apart from the obvious fact that the respondent is required to involve itself in s.44 proceedings, that injustice will be suffered by the respondent. The time elapsed from the date of the significant occurrence, namely the alleged redundancy, to the lodging of the appellant's application is not sufficient, in the circumstances of this case, to justify an order under s.26(1)(a) of the Act, and as a matter of law, in puro, the dismissal of the appellant's claim. Insofar as the order might be said to be a discretionary order, I find that the Commission's discretion miscarried. I would substitute my own decision or finding as I have said the findings above ought to be. The decision was wrong in law for the reasons which I have mentioned.

This is a dispute which remains unresolved. Provided that it is now expeditiously disposed of, I can see no abuse of process and no other reason in the public interest or otherwise why it should be dismissed under s.27 of the Act. Indeed, given the new and unresolved allegations, it should be now proceeded with expeditiously (and the applicant has a responsibility to do so) so as to ensure that the matter is properly dealt with. This is particularly the case given s.6(b) and s.6(c) of the Act.

However, having regard to s.26(1)(a) and s.26(1)(c) of the Act, I am of opinion that there was no abuse of process. There is no need therefore for me to determine whether there was a breach of s.26(3) or a denial of natural justice. In any event, in my opinion, this was a matter sufficiently raised by the answer at first instance related to the question of estoppel so as to put the appellant on notice that the question of abuse of process was a matter to be taken into account. I do not think that it was necessary, having regard to Pantorno v R [1989] 166 CLR 466 (HC) that the Commission go further.

S.33 OF THE ACT

It was submitted that in relying on evidence from the bar table, the Arbitrator had erred. It was submitted that the error had occurred because the Arbitrator had received evidence neither under oath nor affirmation, and that in doing so the Arbitrator had acted in breach of s.33(1)(e) of the Act. S.33(1)(e) provides that, with respect to evidence in proceedings before the Commission—

"(e) the Commission shall take evidence on oath or affirmation."

There is a mandatory requirement because of the use of the word "shall".

What is submitted on behalf of the appellant is that the Arbitrator cannot take cognisance of evidence which is not on oath or affirmation. However, s.33 of the Act should be construed in the context of the whole of the Act and having regard to its objects.

S.6(c) of the Act is relevant. That provision reads—

"The principal objects of this Act are —

...

(c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;" (my underlining)

S.26(1)(a) and (b) of the Act read as follows—

"(1) In the exercise of its jurisdiction under this Act the Commission —

(a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;

(b) shall not be bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just;"

S.27(1) of the Act reads as follows—

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

...

(b) take evidence on oath or affirmation;

...

(i) refer any matter to an expert and accept his report as evidence;

..."

Thus, one of the principal objects of the Act is to provide a means for preventing and settling industrial disputes with the minimum of legal form and technicality. Such an object does not sit well with a requirement that all evidence must be on oath or affirmation.

S.26(1)(a) of the Act requires the Commission (Arbitrator), mandatorily, to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. S.26(1)(a) is in accord with s.6(c) of the Act.

More cogently, however, the Commission (Arbitrator) is not bound by the rules of evidence and may clearly inform itself on any matter in such a way as it thinks just. It may therefore need not rely on evidence on oath or affirmation at all. That certainly envisages evidence from the bar table, or a fact conceded by the parties as being a fact, or agreed fact, inter alia.

In addition, s.27(1)(b) of the Act empowers but does not require the Commission (Arbitrator) to take evidence on oath or affirmation. It does not require it to because the word "may" is used purely in an enabling sense. It is not mandatory.

It is noteworthy, too, that by s.27(1)(i) of the Act, evidence not on oath may be used that is the report of an expert to whom the Commission (Arbitrator) has referred a matter.

S.33(1)(e) of the Act is couched in mandatory terms. S.27(1)(b) of the Act is not. Accordingly, s.33(1)(e) must be read in the light of the whole of the Act, including all of those provisions to which I have referred.

In my opinion, s.33(1)(e) can only make sense if it is read as requiring that all evidence from witnesses in proceedings before the Commission (Arbitrator) should be on oath or affirmation. To read it otherwise would put the section in conflict with s.26(1)(a) and s.26(1)(b) of the Act. To read it otherwise would also exclude evidence from the bar table, evidence of inspections, or evidence by way of conceded facts or points.

I also refer to R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Melbourne and Metropolitan Tramways Board [1965] 113 CLR 228 (HC) where the High Court held—

> "... that the Commissioner was entitled to act on the assertion of advocates without hearing other evidence; but if the assertions were challenged, it would at least be imprudent on the part of the Commissioner not to examine the matter further."

For those reasons, it is clear that it was open to the Arbitrator to hear evidence other than on oath or affirmation and to act on that evidence (see R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Melbourne and Metropolitan Tramways Board (HC) (op cit)) where it did not come from witnesses before the Commission.

There was an argument not specifically directed to the grounds of appeal, or perhaps it was a matter of observation. That is that the decision of the Arbitrator does not prevent a claim for a prospective transfer. I do not read it as so doing, but the whole order is appealed against and if the appeal is successful would fall.

Insofar as the decision was discretionary, the exercise of discretion miscarried as the principles in House v The King [1936] 55 CLR 499 (HC) prescribe. I would substitute my own discretion for the reasons and based on the facts and considerations referred to by me above, insofar as it might be necessary to do so. Insofar as it was not discretionary, the Arbitrator erred in the manner to which I have referred above.

For the reasons which I have set out above, in my opinion, the Arbitrator erred in dismissing the application or portion of it. I would uphold the appeal and quash the decision. That would mean that the Arbitrator can now proceed to hear and determine application No PSAC 29 of 1995.

CHIEF COMMISSIONER W S COLEMAN: I have had the benefit of reading the draft of the Hon President's reasons for decision. I agree with those reasons and with the orders proposed.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the Reasons for Decision of His Honour the President in draft form. I agree for the reasons set out therein that the appeal be upheld and the decision at first instance be quashed and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is upheld and the decision of the Arbitrator made on 29 November 1996 in application No PSAC 29 of 1995 is hereby quashed.

Order accordingly

Appearances: Mr R F Halford (of Counsel), by leave, on behalf of the appellant.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association Incorporated
Appellant

and

Perth Theatre Trust
Respondent.

No 1847 of 1996.

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

7 April 1997.

Order.

This matter having come on for hearing before the Full Bench on the 18th day of February 1997, and having heard Mr R F Halford (of Counsel), by leave, on behalf of the appellant and Ms J H Smith (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 7th day of April 1997 wherein it was found that the appeal should be upheld, it is this day, the 7th day of April 1997, ordered and directed as follows—

(1) THAT appeal No 1847 of 1996 be and is hereby upheld and the decision of the Public Service Arbitrator made on the 29th day of November 1996 in application No PSAC 29 of 1995 be and is hereby quashed.

(2) THAT leave be and is hereby granted to the appellant herein to amend the grounds of appeal in the terms of the document headed "SCHEDULE PROPOSED AMENDED GROUNDS OF APPEAL".

(3) THAT time be and is hereby extended for the appellant herein to lodge and serve appeal books, to and including the 17th day of January 1997.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Katharina Yanyan Deng
Appellant

and

Sin-Aus-Bel Pty Ltd t/a The Ascot Inn
Respondent.

No 1702 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER J F GREGOR
COMMISSIONER C B PARKS.

8 April 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission, constituted by Commissioner R H Gifford, given on 8 November 1996 in application No 991 of 1995.

By the decision appealed against, the Commission at first instance dismissed an application by which the appellant, Katharina Yanyan Deng, alleged that she had been dismissed from the employ of the respondent unfairly, and dismissed her claim, by that application, for compensation. However, by the decision, the Commission did order that an amount of $131.53

contractual benefits which the Commission found had been denied to the appellant be paid to her.

GROUNDS OF APPEAL

That decision is now appealed against on the following grounds—

"1. The dismissal of the Appellant was wrongful because—
   (i) On 10 August 1995 the managing director for the Respondent, Mrs Cecilia Wee, provided the Appellant with a letter advising the Appellant that certain duties ("the duties") were not being performed;
   (ii) Mrs Wee for the Respondent indicated that a review would be conducted of the Appellant's performance of the duties at the end of a two week period ("the review period");
   (iii) The Appellant was performing the duties requested of her by the Respondent within the review period;
   (iv) No review of the performance of the duties was conducted by the Respondent; and
   (v) The Appellant was dismissed regardless of whether the said duties were performed and the level of the performance of the duties.

2. The Commission erred in law and in fact in concluding that the delivery of a letter of reply from the Appellant to Mrs Wee was a sufficient basis to justify the failure of Mrs Wee to conduct a review.

PARTICULARS

   (i) It is a requirement of procedural fairness that an employee be given sufficiently detailed information about allegations against them and that the employee be given an adequate opportunity to refute those allegations.
   (ii) The letter from the Appellant replying to the letter of Mrs Wee provided to the Appellant on 10 August 1995, states the Appellant's understanding of the employment agreement but does not state that the Appellant had refused or would refuse to perform any duty requested of her by the Respondent.
   (iii) The Appellant did perform the duties requested of her in the review period.
   (iv) There was a failure by the Respondent to investigate and review the performance of the Appellant in the review period.

3. The Commission erred in failing to recognise or have regard for or proper regard to the performance by the Appellant of the duties requested of her by the Respondent in the review period.

4. The process of dismissal denied the Appellant procedural fairness in that—
   (i) The decision to dismiss the Appellant was made on the basis of the Appellant furnishing a letter of reply to a letter of the Respondent criticising the Appellant concerning the non performance of certain duties;
   (ii) The Respondent did not advise the Appellant of the reason for dismissal; and
   (iii) The Respondent failed to investigate whether the Appellant had performed the requested duties and failed to conduct a review.

5. The Commission erred in law and in fact in failing to have regard or have proper regard to the following considerations—
   (i) The personal circumstances of the Appellant at the time of the dismissal, in particular, the difficulty of the Appellant in obtaining alternative employment while pregnant;
   (ii) The impact of the dismissal on the Appellant;
   (iii) The inadequacy of the payment in lieu of notice; and
   (iv) The failure of the Respondent to provide supervision by a charted (sic) accountant as indicated in the job advertisement for the position.

6. The Commission erred in concluding that the Appellant had a lack of commitment to performing the task of data entry to the Ezi Accounting computer system by failing to have regard, or failing to have proper regard to the facts that—
   (i) The Appellant was expected to perform certain duties not performed by previous accountants at the Ascot Inn and that she was required to perform all her duties in less time, namely in one less day per working week;
   (ii) The Appellant was assigned additional manual duties to previous accountants at the Ascot Inn and that further manual duties were assigned to the Appellant at the meeting on 29 June 1995;
   (iii) Mrs Wee instructed the Appellant, just prior to leaving for Singapore, to maintain responsibility for the manual debtors ledger and cash book rather than pass those duties on to other staff as was agreed at the meeting on 29 June 1995;
   (iii) (sic) Abraham Bahbah first provided instruction in Ezi Accounting data entry on 5 July 1995 and only provided 15 minutes instruction;
   (iv) Paul Wee failed to complete data entry to Ezi Accounting for June debtors and creditors, and carry the balances forward into the new financial year;
   (v) That following a redistribution of manual duties on 10 August 1995, the duty of data entry to the Ezi Accounting computer system was adequately performed by the Appellant.

7. The Commission erred in fact in finding that Paul Wee stated that he was told by the Appellant that she did not want to do the Ezi Accounting work. Paul Wee stated in evidence he was told by Mrs Wee that the Appellant did not want to do the Ezi Accounting work.

8. The Commission erred in fact in finding that the Appellant denied that the audit of the 1994/1995 cash book was not performed according to standard practice. The Appellant admitted the audit was not performed according to standard practice and stated in her evidence that she performed the audit of the 1994/1995 cash book in such a way as to provide the information that Mrs Wee wanted. Mrs Wee gave evidence as to the information that she wanted from the Appellant in the performance of this task.

9. The Commission erred in fact in finding that the Appellant had said that Mr Hall would take responsibility for the creditors ledger from her and Bessy would take responsibility for the debtors ledger from her after the meeting on 29 June 1995. The Appellant stated in her evidence that Mr John Hall was to take responsibility for the manual debtors ledger after the Appellant had established the ledger, that Bessy was to take responsibility for the manual creditors ledger after the Appellant had established the ledger and that Mr Hall and Bessy would share responsibility for entering data to the manual cash book.

10. The Commission erred in failing to regard or have proper regard to the inconsistencies between Mrs Wee's evidence before the Commission and a tape recording of a meeting on 10 August 1995 in assessing the relative credibility of Mrs Wee and the Appellant.

11. The Commission erred in fact in ordering that underpaid wages of $131.53 be paid when the amount underpaid and the amount claimed was $151.63.

THE APPELLANT SEEKS THE FOLLOWING ORDERS;

1. A declaration that the Appellant was unfairly dismissed by the Respondent.

2. An order that the Respondent pay the Appellant the sum of $7,308.35 as compensation for the unfair dismissal.

3. An order that the Respondent pay $20.10 additional to the sum directed by the Commission to be paid in consideration of underpaid wages."

BACKGROUND

At all material times, the respondent was the proprietor of The Ascot Inn, a motel.

Ms Deng herself gave evidence.

Ms Deng commenced employment as a graduate accountant at The Ascot Inn on 15 May 1995. She had applied for that position in response to an advertisement (exhibit R1), which was in the following terms—

> "Graduate Accountant for all aspects of hotel accounts including eventually to prepare monthly financial reports. Will be working under supervision of Chartered Accountant. Career Opportunity."

It is interesting to note that computer experience was said in the advertisement to be not essential.

There was an initial interview conducted by the former graduate accountant, and her immediate predecessor, Mr Andrew Lim. Later the managing director of the respondent, Mrs Cecilia Wee, together with a financial consultant, Mr Paul Wee Dim Seng (hereinafter referred to as "Mr Paul Wee"), who at an earlier time had been employed by the respondent as a graduate accountant, interviewed Ms Deng. (Mr Paul Wee gave evidence that he was no relation of Mrs Wee).

There was a substantial amount of conflict between the evidence of the witnesses for the respondent and the evidence of the appellant, Ms Deng.

There was evidence given on behalf of the appellant (applicant at first instance) by Mr Andrew Lim, Ms Mary Davis, the executive officer of Kidsafe WA based at Princess Margaret Hospital, Mr George Tan, formerly a fellow employee of Ms Deng with the respondent, Ms Norma Marylin Burgess, a former co-employee, and Mr John Edward Hall, formerly an employee of the respondent.

There was evidence given on behalf of the respondent by Mrs Cecilia Wee, Mr Paul Wee, Mr Abraham Shoukle Bahbah, and Mr Rave Ravendran, chartered accountant.

Ms Deng's evidence was that she was not told the details of her duties. The evidence of Mrs Wee and Mr Paul Wee was that Mr Paul Wee explained her duties to her, and these were maintaining creditors, cash book, data inputting into computer, payroll debtors, cash counting and general duties.

A salary of $20,000 was agreed upon, and it was the evidence of Ms Deng that she was engaged on the basis of a four day week, but to work an additional half day on Saturday, in order to be taught by Mr Paul Wee to operate the Ezi Accounting computer program, which was expected to be completed over three such Saturdays. Mrs Wee and Mr Paul Wee gave evidence that she was engaged on the basis of a four and a half day week, including half a day on Saturday, for the purpose of seeing Mr Paul Wee, who was to be her supervisor, and who usually attended the hotel on a Saturday. (He was an outside adviser of Mrs Wee). At no time was Ms Deng supervised by a chartered accountant. Mr Paul Wee was responsible for overseeing her work. He was critical of her work. Hall Chadwick, chartered accountants, were the respondent's firm of chartered accountants. Mr Ravendran was the chartered accountant concerned. He was, in evidence, critical of the standard of Ms Deng's work.

Mrs Wee and Mr Paul Wee also gave evidence that Ms Deng was engaged on a trial basis, but Ms Deng denied that such was the basis of her engagement.

Ms Deng was introduced to her role by Mr Lim, who conducted this introduction over a period of about four days. He furnished Ms Deng with a copy of a list of his duties (exhibit J1). Reconciliation work, on Mr Lim's evidence, was not part of the graduate accountant role.

On 22 May 1995, Ms Deng was requested by Mrs Wee to carry out a reconciliation of the cash book for 1994-1995, as the balance was incorrect. Ms Deng described it as an audit. Ms Deng's evidence was that she explained to Mrs Wee that she would need a considerable amount of time in which to carry that out, and that Mrs Wee had said to do overtime to get the job fixed. Mrs Wee denied making any reference to overtime. Ms Deng, in evidence, said that she had to carry out a number of duties.

On 28 May 1995, Ms Deng said she was requested to take over the full function of creditors maintenance.

By 3 June 1995, no data inputting into the Ezi Accounting program was being carried out by Ms Deng. Mr Paul Wee agreed on that date to take that task over and to do so until the end of June 1995. Ms Deng was to take it over on 1 July 1995.

Ms Deng worked no more Saturdays beyond 3 June 1995. Mrs Wee said that she confronted her over that fact, but was reassured that the work required to be done would be done.

On 26 June 1995, there was, according to the evidence of Mr Paul Wee and Mrs Wee, a meeting involving Ms Deng, Mrs Wee and Mr Paul Wee, at which Mrs Wee said she was not satisfied that Ms Deng's work was being done, including the food and function reports, and that Ms Deng needed to improve, according to the evidence of Mrs Wee. This was confirmed by Mr Paul Wee. However, Ms Deng had no recollection of that meeting, and there is no reference to it in her diary.

On 29 June 1995, a further meeting occurred. Present were Mrs Wee, Ms Deng and Mr Paul Wee. Mr Paul Wee said that Ms Deng was resisting taking responsibility for putting data into the Ezi Accounting system and there was still no food or function report. Ms Deng said it was agreed that Mr Bahbah, an accounting consultant (and the deviser of and supplier of the system), would provide training for her in the Ezi Accounting system, and, further, that Mr John Hall, an employee, would take responsibility for the creditors ledger, and another employee, Ms Bessy Corleone, for the debtors ledger. Later, according to her, but denied by Mrs Wee, this decision was reversed by Mrs Wee. In any event, the meeting occurred because Mrs Wee was dissatisfied with the way Ms Deng was doing her work and told her so.

About this time, Ms Deng completed her reconciliation of the cash book.

Ms Deng was to commence putting data into the Ezi Accounting system during the second week in July 1995. Mrs Wee was scheduled to leave for Singapore on 11 July 1995, and due to return on 4 August 1995. However, she told Ms Deng, according to her evidence, that Ms Deng needed to ensure that the July 1995 creditors and debtors were up-to-date and inputted into the Ezi Accounting system.

Mr Bahbah, in evidence, confirmed that Mrs Wee, before leaving for Singapore, had told Ms Deng that the inputting of creditors and debtors into the computer were her first priority. Mr Bahbah said that he found a variety of errors which had been made by Ms Deng, that he found it necessary to refer back to the original invoices and that the standard of Ms Deng's work in this respect had been poor. Mr Bahbah gave evidence that he had been an accountant for 18 years. He supplied the Ezi Accounting program to the respondent, and, indeed, devised it. He was, however, critical of the standard of Ms Deng's work, in evidence.

On 15 July 1995, according to Mr Paul Wee, he noted that there was no data being put into the Ezi Accounting system, and he faxed Mrs Wee in Singapore to that effect.

On 18 July 1995, Mrs Wee faxed Ms Deng requesting her to investigate a number of accounting matters. Ms Deng responded to these matters. She also confirmed that no inputting of data into Ezi Accounting had been carried out. Later that week, cheques requiring signatures were urgently sent to Mrs Wee to arrange for payment of creditors.

During the following week, there were a series of faxes between Mrs Wee and Ms Deng relating to a range of matters, in terms which were correctly described by the Commission at first instance as more and more acrimonious. One set of faxes related to the paying of an insurance premium on property which was sold.

On 27 July 1995, a six page fax was forwarded by Ms Deng to Mrs Wee, answering a series of questions, but setting out her position about the various duties she was involved with. That fax contained remarks critical of Mrs Wee.

On 4 August 1995, Mrs Wee returned from Singapore and discovered that Ms Deng's accounts were not in a satisfactory state. Mr Bahbah reported to her that the debtors accounts were finished, but that the creditors were not. His evidence was that Mrs Wee was very upset. Mrs Wee said that she received all sorts of excuses from Ms Deng.

On 10 August 1995, having considered the matter, Mrs Wee handed Ms Deng a letter which outlined the "specific job requirements" which had not been complied with. I reproduce that letter (exhibit R3) hereunder—

"Dear Katharina

I am concerned that you are not performing all the duties that are required of your position as the Accountant at Ascot Inn.

As per our interview (please see attached statement), I outlined your specific job requirements. I feel that the following areas are not being complied with—

* It was agreed that you work four full days and one half day at Ascot Inn. At present you are working four full days only. It was agreed that you work a half day on Saturday with Paul Wee in order for figures to be available for Paul to complete monthly accounting reports.
* It was agreed that you maintain the day to day accounting work of Ascot Inn. These duties include the following—
    1. Maintain full control of our Accounting System "Ezi Accounting".
    2. Maintain a hand written Cash Book for Ascot Inn.
    3. Maintain Debtors and Creditors Ledger.
    4. Produce monthly reports from "Ezi Accounting".
    5. Produce the Food Report and Function Report.
    6. Supervise Accounting Staff and day to day accounting functions.

As at 5th August 1995, some of the above requirements were not complied with. These were as follows—

1. Food report not up to date. The latest food report was week ending 2 July 1995.
2. Function Report not up to date. The latest Function Report was week ending 21 May 1995.
3. No data entry in "Ezi Accounting" for the entire month of July.
4. July Cash Book, Debtors, Creditors, General Ledger entries not entered into Ezi Accounting.
5. No Bank Reconciliation for July.

In alerting you to the above issues we hope that you will know what is expected of you and we can arrange a work environment that all will be happy in. If you know what is expected of you, you will know exactly what you are doing and I will be able to see what you are capable of.

I will review the implementation of the above in two weeks time. If there is still a degree of non compliance with your duties then consideration will be given to your suitability to the position.

Yours faithfully

CECILIA WEE"

This was followed by a meeting on 10 August 1995 between Mrs Wee, Ms Deng and Mr Hall to discuss Mrs Wee's letter. The meeting was tape recorded, with Mrs Wee's permission, and the tape was heard and tendered in the proceedings at first instance (exhibit R10). The meeting involved some heatedness and accusations and counter-accusations. Significantly, Mrs Wee called Ms Deng a liar on two occasions and also called her twisted. Ms Deng accused Mrs Wee of defaming her and harassing her. The meeting concluded with Mrs Wee repeating what she said in her letter, namely that she would review Ms Deng's position in two weeks and if she did not measure up she would dismiss her.

In her evidence, Ms Deng said that the data entries into Ezi Accounting had not been completed because she had not by then received the balance carried forward and she had been maintaining the manual debtors and creditors ledgers.

She re-commenced the data entry into Ezi Accounting on 15 August 1995, and then proceeded on two days sick leave, as a result of a stress condition.

On 21 August 1995, she presented to Mrs Wee her written response, in the form of a six page letter dated 20 August 1995 (exhibit R5), to Mrs Wee's letter of 10 August 1995. In that letter, she denied accusations made against her and accused Mrs Wee of seriously harassing her since she received the letter of 10 August 1995 and of having no genuine intention of achieving a happy work environment. She also accused Mrs Wee of making a defamatory statement about her at the meeting of 10 August 1995 and sought a written apology. Mrs Wee, in evidence, denied that she had harassed Ms Deng, denied criticising her because of her ethnicity, denied reducing her pay to harass her, and denied suggesting that Ms Deng when she was pregnant have an abortion.

Mrs Wee's evidence was that upon receiving the letter (which was probably received on 22 August 1995), she realised that Ms Deng was not going to improve, but that she was simply going to argue and create problems and concluded that it would be impossible for her to work with Ms Deng. To put it briefly, in paraphrase, she said that she had had enough. She then decided to terminate Ms Deng's employment.

Mrs Wee prepared and signed the letter which purported to effect the termination of Ms Deng's employment and was dated 24 August 1995. The letter advised of Ms Deng's immediate termination, with the payment of one week's pay in lieu of notice. Mrs Wee arranged for the letter to be delivered to Ms Deng by Mr Hall, who, in fact, suggested that he deliver it.

There appears to have been no further discussion about the matter between Mrs Wee and Ms Deng, or between Ms Deng and anyone acting on Mrs Wee's behalf, after the letter of 10 August 1995. Indeed, there was no review of the implementation of the requirements contained in Mrs Wee's letter. It was Ms Deng's evidence that she had brought what she was required to do up-to-date. The creditors data she had only made a few entries in, but that would only take less than a day to complete. Mr Bahbah confirmed this, but confirmed that the debtors entries had been brought up-to-date. He did confirm in evidence that she had completed what she had done in accordance with his instructions.

FINDINGS OF THE COMMISSION AT FIRST INSTANCE

The Commission at first instance made a number of findings and reached a number of conclusions which I summarise hereunder—

(1) That Ms Deng was engaged on a four and a half day week, including half a day on Saturday in order to "interface" with her supervisor, Mr Paul Wee.

(2) That the employment was not for a trial period.

(3) That Ms Deng was required to perform the following duties—

(a) Cash counting and verification, cash book maintenance, data entry into Ezi Accounting, support to creditors maintenance (carried out by another employee, Ms Tenouja), food report and function reports, together with assisting in payroll. These were the initial duties and were carried out on a daily basis.

(b) That because of the need for Ms Deng to be trained in the Ezi Accounting system, she did not commence to carry out the inputting activity into that system, and Mr Paul Wee took over this activity at least until the beginning of July 1995.

(c) Because of this reduced workload, Mrs Wee decided to propose to Ms Deng that she carry out the cash book reconciliation task.

(d) Ms Deng did carry out some of the cash book reconciliation outside of her usual hours of work, but this was not necessary, having regard to the reasonable demands of the position.

(e) The reconciliation of the cash book took five to six weeks, but was not concluded on 14 June 1995.

(4) The Commission formed the conclusion that Ms Deng's task in reconciling the cash book was carried out unsatisfactorily. In so concluding, the Commission did not attribute any excuse for the position that some of it had to be carried out in hours excess to the normal hours.

(5) The Commission accepted that a meeting took place in late June 1995 where Ms Deng was mainly told that she was not getting her work done and needed to improve.

(6) A second meeting occurred also.

(7) By the end of June 1995, Ms Deng had been told, in a formal setting, by her employer, that there were concerns over aspects of her commitment and performance.

(8) That prior to Mrs Wee leaving for Singapore on 11 July 1995, she told Ms Deng that she needed to ensure that the July creditors and debtors were up-to-date and inputted into Ezi Accounting.

(9) In the end, Ms Deng, from late June 1995, was aware of Mrs Wee's concern over her lack of commitment to the Ezi Accounting system, but did not properly comply with an express instruction to give the inputting work into Ezi Accounting first priority.

(10) The Commission had difficulty in accepting her explanation as to why the direction was not carried out, to the full, particular since Mr Bahbah was there to assist her.

(11) That such direction was not carried out to the full caused the Commission to conclude that Ms Deng's performance was less than satisfactory and was symptomatic of a lack of commitment to the process.

(12) The task of completing the function report was not completed at all.

(13) Ms Deng knew exactly where she stood because the letter of 10 August 1995 referred to a review in two weeks as to whether there had been compliance with the requirement that the nominated tasks be performed. The Commission also accepted that in the event of a degree of non-compliance being found, consideration would be given to her "suitability to the position".

(14) The Commission found that, in the interview that was consequent upon the delivery of the letter and also on 10 August 1995, Mrs Wee made the position even clearer when she said to Ms Deng that if she did not measure up Mrs Wee would dismiss her.

(15) The review spoken of 11 days earlier was not, in a formal sense, instituted and this was seen by Ms Deng to be procedurally unfair.

(16) The letter of 20 August 1995 was a continuation of the trend which was a reflection of an absence of commitment to succeed at the task.

(17) The Commission was prepared to accept the assessment by Mrs Wee, following her receipt of the letter of 20 August 1995, that it was not possible for both to work with each other.

(18) That although Mrs Wee bore some responsibility for that outcome, it did not mean that the process was unfair or that Ms Deng was harassed by Mrs Wee.

(19) By 10 August 1995, having regard to the recorded tape of the interview, there was a breakdown in the relationship between the two and at an advanced stage, so that the final outcome was inevitable.

(20) The Commission was satisfied that there was a valid reason for the dismissal of Ms Deng connected to capacity, and that therefore there was no unfairness in the dismissal.

(21) As to the review which the respondent had undertaken would take place following the letter of 10 August 1995, it did not take place. However, the Commission was not prepared to attribute unfairness to this because of that which "interceded" (sic) in the process, namely Ms Deng's letter of 20 August 1995.

(22) Mrs Wee's response to the explanation contained in the letter of 20 August 1995, namely that she viewed Ms Deng as still wanting to argue about the issue, was a reasonable response, in the Commission's view, especially bearing in mind the context, namely that Mrs Wee had given express instructions to Ms Deng, prior to leaving for Singapore, to give first priority to putting data into the Ezi Accounting system.

(23) In this explanation, Ms Deng, as in a number of others, gave no sign of demonstrating a preparedness to commit herself to get the job done, let alone properly done.

(24) That preparedness, in the case of the Ezi Accounting, was, in the Commission's view, absent from the beginning of Ms Deng's engagement until the date she wrote the letter of 20 August 1995.

(25) There was therefore no unfairness in the process of Mrs Wee choosing to not proceed with the review she originally proposed, in light of the receipt of Ms Deng's letter.

ISSUES AND CONCLUSIONS

There are a number of authorities and principles which are relevant. The case of Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 at 479 (HC) is in point.

In Devries and Another v Australian National Railways Commission and Another (HC) (op cit), it was held by Brennan, Gaudron and McHugh JJ that 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. If the 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. I do not think, however, that the principle laid down there contradicts what was said in Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC) where it was said that in general on an appeal by way of re-hearing from a judge sitting without a jury an appellate court is in as good a position as the trial judge to decide on the proper inference to be drawn from facts which are undisputed or which, having been disputed, are established by the findings of the trial judge. In deciding what is the proper inference to be drawn, the appellate court will give respect and weight to the conclusion of the trial judge, but once having reached its own conclusion will not shrink from giving effect to it.

The decision at first instance was a discretionary decision. It is for the appellant to establish, in accordance with House v The King [1936] 55 CLR 499 (HC) and the principles set out therein, that the discretion of the Commission miscarried.

The Full Bench may not substitute its decision for the decision of the Commission at first instance unless it is established that the discretion of the Commission miscarried at first instance according to the principles in House v The King (HC) (op cit).

The decision in this matter was that the dismissal was not unfair. The decision may be substantively unfair or procedurally unfair or both.

In Shire of Esperance v Mouritz 71 WAIG 891 (IAC), Kennedy J laid down the following principle relating to the weight to be given to procedural unfairness in this jurisdiction (see page 895)—

> "In my opinion, any breach of the rules of natural justice was a relevant circumstance in the determination of the critical question as to whether the dismissal was harsh or unjust. 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 see "The Law of Employment, Macken, McCarry & Sappideen, 3rd ed, 277-278, and the authorities there cited. In some cases, this can be a most important circumstance. But in a case such as the present, no question of the invalidity of a decision, as such, falls for determination. The case does not turn simply upon the respective legal rights of the parties."

In this jurisdiction, as in all others, it is the overriding concept of fairness that governs the exercise of the Commission's powers. The classic statement of fairness is that of Sheldon J of the former New South Wales Industrial Commission in In re Loty and Holloway v AWU (1971) AR 95 at 99, adopted in Miles and Others t/a Undercliffe Nursing Home v FMWU 65 WAIG 385 (IAC) as follows (see page 386)—

> "The jurisdiction has been variously stated: in re Loty and Holloway v. Australian Workers' Union (1971) A.R.

95 at 99 Sheldon J. said that even though in the dismissal be it summary or on notice, the employer has not exceeded his common law and/or award rights, the Court was entitled to enquire as to whether the employee had received "less than a fair deal". He also approved what had been said in an earlier case whether there had been "a fair go all round". In a later case Metropolitan Meat Industry Board v. Australian Meat Industry Employees' Union (New South Wales Branch) (1973) A.R. 231 at 233 Watson J. thought that even if there are grounds for terminating the contract of employment it was still open to the tribunal to examine the severity or otherwise of the step of dismissal."

The appellant, in her grounds of appeal and through the submissions of her counsel, made a number of complaints of error in relation to the decision. In addition, there were submissions in response by Mr Jones on behalf of the respondent.

GROUND 1

By ground 1, it was submitted that the dismissal was wrongful in the terms of the letter of 10 August 1995. This was so, it was submitted, because the appellant had performed the duties which were required to be performed within the two week review period. The food reports were prepared (see page 40 of the transcript at first instance (hereinafter referred to as "TFI")), according to the evidence of Ms Deng. That, however, was not Mrs Wee's evidence. The function report, Ms Deng said, was up-to-date as at 13 August 1995. The appellant's evidence was that there was no data entry into the Ezi Accounting system because Ms Deng was asked to maintain the manual debtors ledger, creditors ledger and the cash book. However, the evidence was that she did the data entry concerning the debtors for July and August 1995 and made a start on the creditors, but did not complete that particular function. Mr Bahbah in evidence did confirm (see page 569 (TFI)) that the Ezi Accounting was, to some extent, up-to-date—

Q: "Is it correct that Katharina Deng did complete the July and August trade debtors entries to the Easy Accounting?"

A: "Well, she had completed July and August, it was — well, halfway through actually. We were not at the end of August, but she was update, yeah."

He doubted, however, whether there were more than a few entries for the July and August creditors data (see page 570 (TFI)).

Ms Deng's evidence was that she had made a start on the creditors data, but did not complete it. That was because she had also been asked to continue to maintain the manual debtors ledger, the creditors ledger and the cash book. Ms Deng's work was corrected, it was submitted, in accordance with Mr Bahbah's instructions for July and August 1995. Another day only would have been needed to complete the data in the Ezi Accounting system, according to Ms Deng's evidence, as referred to (see page 42 (TFI)) in the submissions of Mr Robson (of Counsel), on behalf of the appellant. There was no bank reconciliation for July. However, the evidence was that the bank statement arrived on 8 August 1995 and was not received until 9 August 1995. Further, the evidence was that Ms Deng did a bank reconciliation, including a summary, on 10 August 1995.

Mrs Wee's letter of 10 August 1995 quite clearly said that a review of the performance of Ms Deng's duties would be conducted. The Commission at first instance found, and it is quite clear and conceded by Mr Jones, that no review took place.

It was submitted by Mr Robson that the receipt of Ms Deng's letter of 20 August 1995 was the "operative reason" for the dismissal, not whether she had, following the letter of warning, performed those duties. There was no doubt that Mrs Wee dismissed Ms Deng because she reached certain conclusions following the letter of 20 August 1995. Those conclusions were expressed at page 676 (TFI)—

"Oh yes. I had a proper reason to terminate her long before that, but I kept hoping against hope that she would come to her senses. I wasn't sure what was bothering her, but it looks — I mean, came to the stage where, from after the June meetings, and counselling in July and then all those crazy faxes that went up and down and — and even up to the 10th when I gave her her written warning, she came back with all these things. I knew that it was an impossibility. There is no way I can work with her or she can work with us; ... I would still have had to dismiss her or else I'll go crazy or I'll lose my staff."

On 10 August 1995, as I have already said, there was a disputation and Mrs Wee twice told Ms Deng that she was a liar. However, Mr Hall, who was present, described what was occurring without demur from either lady as a fresh start.

There were general submissions relating to this ground and to some other grounds made on behalf of the respondent by Mr Jones. The primary submission was that credibility was in issue, the Commission at first instance had assessed credibility, and it was not for the Full Bench to overturn the facts.

Mrs Wee asked for a reconciliation not for the sort of work produced by Ms Deng, it was submitted. Further, Mr Paul Wee said that this work was not done in accordance with standard practice and was meaningless. That certainly was his evidence, and it was referred to by Mr Jones in submissions. Mrs Wee complained that the cash book was not done properly. Ms Deng admitted that she had not done a reconciliation according to normal standards, but that she had performed this task according to Mrs Wee's instructions.

The Commission at first instance also found that, before Mrs Wee left for Singapore on 11 July 1995, Mrs Wee required Ms Deng to make sure that Ezi Accounting was brought up-to-date. The job was not done at all during July 1995, or, indeed, until Mrs Wee returned from Singapore in early August 1995, Mr Jones submitted. Mr Bahbah could not re-organise it because the "inputting" of data by Ms Deng was not up-to-date, Mr Jones submitted. He also submitted that after three months, Ms Deng had shown no propensity to come to grips with the job at all.

Further, the Commission at first instance (see page 29 of the appeal book (hereinafter referred to as "AB")) had concluded that since the Ezi Accounting direction was not carried out to the full, Ms Deng's performance was less than satisfactory and was symptomatic of a lack of commitment. The Commission noted that when she was dismissed it would have taken one day to complete the creditors data input.

It was submitted that the lack of commitment came from the very beginning of her employment on 15 May 1995 and that there was a reluctance to be involved in the computerised section of her work.

Mr Jones also submitted that the letter of 10 August 1995 was in the form of a warning to her, and the tape of the meeting of 10 August 1995 corroborated this. He further submitted that as at 10 August 1995 Ms Deng was under no illusion as to her continued employment if she failed to meet Mrs Wee's standards. Certainly, he conceded no review took place, but that was because of Ms Deng's letter to Mrs Wee of 20 August 1995. In the letter, Ms Deng alleged harassment and defamation. The Commission at first instance concluded that that letter was a continuation of Ms Deng's defensive attitude to Mrs Wee, and that the decision to terminate her employment was actuated by the letter of 20 August 1995, and, further, that this made a review impracticable (see pages 663-669 and 676 (TFI)).

Mrs Wee said that when she received the letter, she felt "here she goes again". Mrs Wee was of opinion, so the submission went, that there would be no change from previous arguments instanced by letters and faxes (see pages 664-667 (TFI)).

Mrs Wee therefore concluded, as her evidence revealed, that an on-going relationship was an impossibility. She believed that she had a proper reason to terminate Ms Deng's employment. It was submitted that full warning had been given to Ms Deng of what might occur in accordance with the requirements of fairness. Procedural fairness was also afforded her by way of the warning of 10 August 1995. There was, it was submitted, no miscarriage of the exercise of the Commission's discretion.

It was also submitted by Mr Jones that Mr Paul Wee was in charge of accounts and supervised Ms Deng, that the cash book had been vandalised as Mrs Wee claimed that it had, and that Mr Ravendran said that the work was not acceptable. Further, after 29 June 1995 and the meeting of that date, Ms Deng should have been under no illusion that there were grave

concerns over aspects of her commitment. It was, however, her duty, too, after 1 July 1995, to maintain the currency of the computerised accounting system and she had not done so.

GROUND 2

By that ground, the appellant complained that the Commission at first instance erred in fact and in law in concluding that the delivery of a letter of reply from the appellant to Mrs Wee was sufficient basis to justify the failure of Mrs Wee to conduct a review of the performance of the duties of the appellant. It was submitted that what occurred was a failure to afford the appellant a reasonable opportunity to respond to "adverse" allegations. That, it was submitted, was one component of procedural fairness in an employment context. (The Full Bench was referred to Wheeler v Philip Morris Ltd 97 ALR 282 (FC) and Byrne and Frew v Australian Airlines Ltd 120 ALR 274 (FC), as well as Milentis v Ansett Wridgways Removals 74 WAIG 1954).

In any event, so the submission went, the letter (exhibit R5) of 20 August 1995 was only a response to Mrs Wee's letter of 10 August 1995 (exhibit R3).

It was submitted that it was not said in exhibit R5 that the appellant had refused or would refuse to perform any duty, and its provisions were not sufficient to justify the respondent refusing or failing to conduct a review. In fact, so the submission went, the appellant did perform the duties requested of her and did so within the review period.

Further, it was submitted, the employer has an obligation to properly investigate the facts relating to an employee in determining whether the step of dismissal should be taken (see Wheeler v Philip Morris Ltd (FC) (op cit) and Byrne and Frew v Australian Airlines Ltd (FC) (op cit) at page 328 per Gray J, as well as Milentis v Ansett Wridgways Removals (op cit)).

It was submitted that no such investigation took place. Further, it was submitted that replying to a letter of criticism is simply an aspect of procedural fairness and is not conduct which provides a proper foundation for dismissal, even in the context of there being a prior employment dispute between the employer and the employee. In short, it was submitted that having undertaken to conduct a review of an employee's performance, the respondent had an obligation to conduct the review before considering whether to dismiss.

GROUND 3

By this ground, the appellant alleged that the Commission at first instance erred in failing to recognise or have proper regard for the performance by the appellant of the duties requested of her during the review period.

As the appellant correctly pointed out, there was no finding as to what duties were or were not performed during the review period. Such a finding was, it was submitted, of crucial importance to the issue of commitment of the appellant to succeed in her work.

The failure of the Commission to make such a finding and to take into consideration such a factor resulted, it was submitted, in the Commission erring in the exercise of its discretion.

GROUND 4

It was submitted that the fairness of the procedure adopted in dismissing an employee is a relevant factor in determining whether a dismissal is unfair (see Shire of Esperance v Mouritz (IAC) (op cit)).

The elements of what is a fair process were considered by Gray J in Byrne and Frew v Australian Airlines Ltd (FC) (op cit). Without an employee being provided with the reason for dismissal, it is difficult to assess whether the appellant was warned about this particular matter and given an opportunity to reply concerning the actual reason for dismissal.

The Commission at first instance found, and found correctly, that the letter did not refer to any reason for dismissal and did not do so because it followed up on a letter of warning. However, it was submitted that there was procedural unfairness because the appellant had a legitimate expectation that the respondent would conduct a review. If the respondent had decided not to conduct a review after receiving the appellant's letter, the respondent should have advised the appellant so that she could have been given an opportunity to make representation.

GROUND 5

It was alleged and submitted that the Commission at first instance failed to take a number of significant matters into account in reaching conclusions concerning the fairness or unfairness of the dismissal of Ms Deng. These included the personal circumstances and the impact of the dismissal on the particular employee, the ability of the particular employee to obtain alternative employment, and the financial and social consequences of the dismissal (see Gregory v Philip Morris Ltd 80 ALR 455 (FC) and Bostik (Australia) Pty Ltd v Gorgevski (No 1) (1992) 41 IR 452 (FC)).

In this case, there was evidence of difficulty for Ms Deng in obtaining other jobs, she was only paid one week's pay in lieu of notice, and she suffered distress which affected her sleep, it was submitted.

Other factors which should have been taken into account, and were not, so the submission went, included the failure to provide supervision by a chartered accountant. It was submitted that there was no chartered accountant at The Ascot Inn and the chartered accountant from Hall Chadwick, Mr Ravendran, did not supervise her. It is, of course, true that Mr Ravendran did not supervise her. It is also true that there was no chartered accountant at The Ascot Inn.

This, it was submitted, was conduct by an employer contributing to the breakdown of the employment relationship. What it was, so the submission went, was a deficiency in managerial organisation which was relevant to the assessment of the harshness of the termination (see Izdes v L G Bennett and Co Pty Ltd t/a Alba Industries (1995) 61 IR 439).

GROUND 6

The Commission at first instance found that preparedness in the case of the Ezi Accounting system was, in the Commission's view, absent from the beginning of the appellant's engagement until when she wrote the letter of 20 August 1995.

Further, the Commission said that it would not be prepared to find any unfairness in the process of Mrs Wee choosing not to proceed with the review which she originally proposed, in the light of Ms Deng's letter of 20 August 1995.

Mr Robson submitted that in reaching that conclusion, the Commission failed to have proper regard for certain factors. These were as follows—

(1) The appellant was expected to perform duties not performed by previous accountants at The Ascot Inn and in less time, namely one less day per working week (see page 393 (TFI)).

Mr Robson referred to the evidence of the appellant.

(2) There were four duties not performed by Mr Lim which were performed by Ms Deng, Mr Robson submitted—

(a) Bank reconciliations.

(b) Maintaining a manual debtors ledger.

(c) Maintaining a manual creditors ledger.

(d) The accounts payable job.

In addition, Ms Deng dealt with insurance claims which were said not to be an onerous task.

There was also the evidence of Mr Paul Wee that there had been no reconciliation done for three years (see pages 345-346 (TFI)). He certainly said in evidence that there was a backlog of work.

The Commission at first instance, it was submitted, found that extra duties were performed by Ms Deng (see page 26 (AB)). Therefore, these matters should have been taken into account in assessing her commitment to the function of Ezi Accounting data entry.

Further, she was told not to pass on the manual debtors and creditors ledger duties, according to her evidence, which Mrs Wee denied. No finding was made in relation to that matter.

It was submitted that the level of instruction which she received in the Ezi Accounting system was inadequate. It was submitted that Mr Bahbah gave her 15 minutes instruction, which was all that she needed he said. Mr Lim gave her some instruction, but was not sure for how long. I would observe that Mr Hall said in evidence that he was able to master the system after a while.

A further relevant factor, which was not considered in assessing the performance of Ms Deng's duties, it was submitted, was that Mr Paul Wee had failed to complete the data entry to the Ezi Accounting computer system for the debtors and creditors when he had the responsibility for doing this up until 30 June 1995. He had not completed the balance to carry forward. In fact, following the re-distribution of manual duties on 10 August 1995, the duty of data entry to Ezi Accounting was adequately performed by the appellant, it was submitted. There was agreement at the meeting of 10 August 1995 that cash books and the manual debtors ledger would be passed to Ms Corleone and Mr Hall respectively (see pages 145 and 880(a) (TFI)). That also was the submission.

After manual duties were assigned to other staff, the appellant directed her efforts to data entry. This was corroborated to some extent by Mr Bahbah (see page 569 (TFI)).

The work load should have been taken into account, it was submitted, in assessing the performance of Ms Deng, the employee (see Margio v Fremantle Arts Centre Press 70 WAIG 2559 (FB)).

There were submissions as to ground 6 by Mr Jones that there was no supervision by a chartered accountant, nor was there any need for it. It was, Mr Jones submitted, highly improbable that it was mentioned to Ms Deng as a condition of her employment.

The evidence of Mr Paul Wee, Mr Bahbah and Mrs Wee, Mr Jones submitted, showed that Ms Deng had initial training by Mr Lim in the four days that he was there to supervise her. She clearly acknowledged that she had had initial training from Mr Lim. Indeed, in the end, she did master it and came to grips with it, as the evidence reveals, after 10 August 1995. The submission was that she had had ample opportunity in training to come to grips with the Ezi Accounting system.

GROUND 7

The Commission at first instance, it was submitted, erred in fact in finding that Mr Paul Wee stated that he was told by the appellant that she did not want to do Ezi Accounting. In fact, Mr Paul Wee said that Mrs Wee told him that the appellant did not want to do Ezi Accounting (see pages 310 and 343 (TFI)). Mr Paul Wee admitted that Ms Deng did not tell him that herself (see page 345 (TFI)). In fact, Mr Paul Wee spoke to her about it (see page 316 (TFI)). She said that she had no confidence in the system, but said that she would start to maintain it from 1 July 1995.

GROUND 8

The Commission at first instance found that Ms Deng said that the reconciliation as she carried it out was a case of achieving a balance between total deposits and total payments. She said that she had achieved this and did so in accordance with standard practice. The evidence was that she did not compile a list of unpresented cheques because it was time consuming. However, her work on the 1994-1995 cash book was not a standard bank reconciliation. What she did was in accordance with Mrs Wee's instructions, she said (see pages 215 and 395 (TFI) and see, too, Mrs Wee's evidence at page 716 (TFI)). A standard bank reconciliation would not provide that information (see page 349 (TFI)). It was submitted that that was the evidence on which ground 8 should be found to have been made out.

GROUND 9

It was alleged in ground 9 that the Commission at first instance erred in fact in finding that the appellant had said that Mr Hall would take responsibility for the creditors ledger from her and Ms Corleone would take responsibility from the debtors ledger from her after the meeting on 29 June 1995. It was submitted that the appellant stated in her evidence that Mr Hall was to take responsibility for the manual debtors ledger after the appellant had established the ledger, and that Ms Corleone was to take responsibility for the manual creditors ledger after the appellant had established the ledger, and that Mr Hall and Ms Corleone would share responsibility for entering data to the manual cash book.

The submission was that the Commission misunderstood the evidence given. The Commission found that Mr Bahbah was to give Ms Deng training in the Ezi Accounting system; it was also agreed that Mr Hall would take responsibility for the creditors ledger from her, whereas Ms Corleone would take over the debtors ledger responsibility.

Mr Robson submitted that the Commission should have found that Ms Deng said "Well, how am I going to perform the Easy Accounting duty?", and she said that the way to do it was to pass on to Mr Hall the manual debtors ledger to maintain and the manual creditors ledger to Ms Corleone to maintain (see pages 40-41 of the transcript on appeal).

GROUND 10

Mr Robson submitted that the case of Devries and Another v Australian National Railways Commission and Another (HC) (op cit) applies, but that there would be exceptions to that rule if the Commission failed to take into account particular circumstances or probabilities (see Healey v Bank of NSW (No 2) (1899) 24 VLR 694 (FC) and Khoo Sit Hoh and Others v Lim Thean Tong [1912] AC 323 (PC)).

For example, it was submitted, the tape recording (exhibit R10), revealed inconsistencies with what Mrs Wee said in the witness box and what she said on tape. Mrs Wee said that Ms Deng had not asked her to sign Ms Deng's notations to exhibit R3. However, the tape reveals otherwise (see page 880(b) (TFI)).

Further, Mrs Wee denied in evidence that she said that she would reduce the income of Ms Deng (see page 821 (TFI)). On the tape she said that she would reduce Ms Deng's salary pro rata in accordance with what she claimed was a reduction in hours worked (see page 881 (TFI)).

Also, it was submitted that Mrs Wee alleged that Ms Deng had been paid $120.00 "under the table" by the "children's hospital". Mrs Wee denied that she had made this accusation in evidence, but the tape records her as making it (see page 863 (TFI)).

There was also a submission that on tape Mrs Wee accused Ms Deng of working at the computer with a hard boiled egg in one hand and saying in evidence that it was an apple and not an egg. However, that is a difference which is of little consequence.

GROUND 11

There was an error conceded as having occurred in the calculation of the contractual benefit ordered to be paid, the amount of the claim being properly calculated as $151.63 and not $131.53.

CONCLUSIONS

The Commission's decision revolved around this finding (see page 31 (AB))—

> "Ever since the series of faxes in July 1995, to and from Singapore, the personal relationship of both has soured, largely as a result of accusations made by each to the other. This reached its peak at the interview on 10 August 1995. The Commission gained the impression, on hearing the recorded tape of the interview, that a breakdown in the relationship between the two was at an advanced stage. The final outcome was really inevitable."

The Commission at first instance found that a valid reason for the dismissal existed "connected to capacity", and was unable to find any unfairness in the dismissal.

The Commission also found that no unfairness in the dismissal took place, procedurally, because, if I may paraphrase, there was an intervening factor. That intervening factor was the letter of 20 August 1995 (exhibit R5). The Commission adverted to that letter and observed that it was "defensive in character" as it related to the Ezi Accounting system. The Commission also referred to the explanation in the letter that, as at 27 July 1995, Ms Deng was still awaiting further instructions on the matter from Mrs Wee.

Mrs Wee's response, the Commission held, was a reasonable response, especially bearing in mind the context, namely that Mrs Wee had given express instructions to Ms Deng, prior to leaving for Singapore, that she put the relevant data into the Ezi Accounting system.

The Commission at first instance found that, in this explanation, as in a number of others (which are not specified), there was no sign of demonstrating a preparedness to commit herself to get the job done, let alone properly done.

The Commission at first instance also found that preparedness in the case of the Ezi Accounting was absent

from the beginning of her engagement until the date she wrote the letter. For those reasons (see page 32 (AB)), the Commission was not prepared to find that there was any unfairness in the process of Mrs Wee choosing to not proceed with the review in the light of the letter.

The Commission, of course, accepted that Ms Deng was not harassed, even though it accepted that some forceful remarks were made by Mrs Wee about Ms Deng's pregnancy.

The Commission also accepted the assessment by Mrs Wee following the receipt of Ms Deng's letter of 20 August 1995 (exhibit R5) that it was impossible for them to work together.

On 10 August 1995, Mrs Wee wrote her letter (exhibit R3) and had the same handed to Ms Deng. The letter—

(1) Alleges that Ms Deng was not performing all of the duties required of her position.

(2) Identifies a number of areas in which Ms Deng is not performing her duties, specifying what her duties were.

(3) Alleges that as at 5 August 1995 some of those duties were not being complied with, namely—

  (a) Food reports were not up-to-date.

  (b) Function reports were not up-to-date.

  (c) There was no data entry in Ezi Accounting for the entire month of July 1995.

  (d) The July cash book, debtors, creditors and general ledger entries were not entered into Ezi Accounting.

  (e) There was no bank reconciliation completed for July 1995.

The letter is clearly also a warning. The letter expressly says that there will be a review of these matters in two weeks time. It also contains an express warning that if there were still "a degree of non-compliance" with her "duties" then consideration would be given to Ms Deng's suitability to continue to occupy her position. This, of course, followed expressions of dissatisfaction on 29 June 1995, and, if Mrs Wee and Mr Paul Wee's evidence was accepted, on 26 June 1995. There were also criticisms for the standard of Ms Deng's work in evidence by Mr Paul Wee, Mr Bahbah and Mr Ravendran, but these do not relate to the period after 10 August 1995. Indeed, there is evidence of some compliance with Mr Bahbah's instructions after 10 August 1995 by Ms Deng.

On 10 August 1995, there was an acrimonious discussion relating to the letter and the matters raised in it at which Mr Hall was present with Mrs Wee and Ms Deng. The tape recording, as I have said, contains accusations by Mrs Wee that Ms Deng is twisted and a liar, and Ms Deng's allegations that Mrs Wee had defamed her and harassed her. Mrs Wee, although she denied it in evidence, threatened to reduce Ms Deng's wages, according to the tape recording. However, in the end, Ms Deng said that she would deal with her work and certain tasks were agreed to be allocated to Mr Hall and to Ms Corleone, who were non-accountant members of staff. Significantly, it is quite clear from the transcript and from the tape recording, that the parties had agreed to make a fresh start.

Thus, on all of the evidence, if the letter of 20 August 1995 had not been written there would have been a review. Further, the review, if Ms Deng's evidence, corroborated, to some extent, by Mr Bahbah's evidence, was accepted, then there would have been evidence that she had done the work which she was required to do, to a large extent, given that she had two days sick leave between 10 August 1995 and 24 August 1995.

However, the letter of 20 August 1995 was clearly, on Mrs Wee's evidence, which the Commission at first instance accepted, the reason for dismissal. Mrs Wee's evidence to this effect is referred to above.

Ms Deng set out in her letter an answer to those points in Mrs Wee's letter which made allegations about Ms Deng's failure to perform her duties, what her duties were, and corrects Mrs Wee's version of the oral agreement reached on 15 May 1995. That letter noted that the letter of 10 August 1995 from the respondent, written by Mrs Wee, "was served to me as warning to dismissal". It clearly was. Ms Deng also answers the allegations about her work, referred to in Mrs Wee's letter. She acknowledges that everybody at The Ascot Inn understands that Mrs Wee is the boss, and only her instructions should be followed. She also complains of harassment which she says was more severe since the letter of 10 August 1995. She also complained that things said at the meeting of 10 August 1995 were defamatory and seeks an apology for these remarks having been made. She also warned that the threat to reduce her rate of pay would be in breach of contract and seeks payment of overtime. The letter ends with a request for early attention to these matters "so that we can get on with a normal and productive relationship". The letter was a response to a warning given and an answer to allegations and statements of fact with which Ms Deng agreed. The letter rightly takes umbrage at Ms Deng being called a liar and twisted. The letter, however, does say that Ms Deng wishes to get on with a normal and productive relationship, and there is evidence that she made some attempts to further that aim by attempting to complete the input of data into the Ezi Accounting system.

The letter was not answered. There was no review. Ms Deng was not told of the effect of the letter on Mrs Wee, and was, in fact, dismissed three days later.

The Commission at first instance found that Ms Deng was employed for four and a half days per week, not four days per week, contrary to Ms Deng's allegations. There was some evidence that Ms Deng performed more duties than Mr Lim in a shorter working week. There was also a finding by the Commission that Ms Deng's task in reconciling the cash book was carried out unsatisfactorily.

It is noteworthy that Ms Deng was dismissed after a period of only three months, and was said in evidence, which was not accepted by the Commission, to have been employed only for a trial period. The dismissal occurred because Mrs Wee decided that it would be impossible, following the letter, for them to continue to work together, as the Commission found. It did not occur or was not expressed to be occurring because Ms Deng had not complied with a warning contained in exhibit R3. In any event, there was no review to determine whether she had. The letter of dismissal gives no reason for the dismissal.

I now turn to whether there was any procedural unfairness in the dismissal. That is the factor to be taken into account. It may in some cases be the determinative factor (see Shire of Esperance v Mouritz (IAC) (op cit)).

It was submitted that the respondent had failed to afford procedural fairness to Ms Deng, the appellant, because it was obliged to conduct a reasonable investigation to ascertain what view it should take of any circumstances which it might take into account in deciding to dismiss the appellant and had not done so. Secondly, it was submitted that the respondent was required to formulate what it alleged the appellant had done or failed to do and advise the appellant and it had not done so. Thirdly, it was obliged to put the allegations of omission and commission to the appellant and given her a fair opportunity to be heard as to those allegations. It did not do so. Finally, it was obliged to give the appellant a fair opportunity to be heard as to those allegations. That was the respondent's duty (see Byrne and Frew v Australian Airlines Ltd (FC) (op cit) at page 328 per Gray J).

The respondent did not conduct a review and did not comply with the requirements which I have extracted from what Gray J said in Byrne and Frew v Australian Airlines Ltd (FC) (op cit).

The respondent's managing director, Mrs Wee, in fact, received the letter, decided that it was impossible that she continue to work with Ms Deng, and, almost immediately, dismissed her.

Had a review occurred, it might have revealed that, at least as far as work was concerned, Ms Deng was doing what she was required to do, or substantially attempting to do what she was required to do, given that only 14 days had elapsed since the date of the letter (exhibit R3) and for two days she was absent ill. (That is, if the evidence to that effect were accepted).

It may not have been possible to investigate the matter further, because it was Ms Deng's letter and its contents which was the reason for her dismissal. However, at no time was she told after the receipt of the letter what she had done or failed to do. The dismissal did not relate to the matters raised on 10 August 1995. Ms Deng was not given a chance to hear what the

allegations against her were and to respond to such allegations. It is also to be borne in mind that Mrs Wee had written to Ms Deng setting out her complaints on 10 August 1995 and that Ms Deng was therefore entitled to reply and to reply in writing. Indeed, she would not have been prudent had she not. I am bound to say that she was not afforded procedural fairness, and I would so find.

Further, there are other matters. Mrs Wee had at least threatened to reduce Ms Deng's salary because Ms Deng maintained that she was working a four day week as her contract required. The Commission at first instance found that the contract was for a four and a half day week. Further, the parties had really agreed to make a fresh start, and Ms Deng was given no notice that this situation had changed and that there was not to be a review, but a dismissal. Further, Mrs Wee had called Ms Deng twisted and a liar. An apology for so doing would seem not to have been an unreasonable thing to request. The Commission, in my opinion, should have made a finding in the light of these facts as to Ms Deng's failure to keep the data in the Ezi Accounting system, whether in fact that situation had been remedied or substantially remedied, as the evidence of Ms Deng, and, to some extent, that of Mr Bahbah, was. The question of her commitment could not properly be determined without a finding that Ms Deng had completed or genuinely attempted to complete the Ezi Accounting input and any other outstanding work after the letter of 10 August 1995. In any event, Ms Deng was not dismissed for that and was not dismissed for lack of commitment.

It should be said that some allegations by Mrs Wee were found not to be correct. In short, however, the appellant was dismissed, as ground 1 alleges, regardless of whether her duties were now being performed and the level of those duties, and whether what she did after 10 August 1995 demonstrated commitment or not.

Further, the Commission at first instance did err in concluding that the letter of 20 August 1995, in reply to Mrs Wee's letter, was of sufficient basis to justify the failure of Mrs Wee to conduct a review to consider whether Ms Deng was now performing her duties. If she were so performing them then that would be evidence of commitment.

There was some evidence on which it might have been concluded that because Ms Deng performed more tasks than Mr Lim that she was demonstrating sufficient commitment before that. There is not a clear finding on that point.

Ms Deng's letter does not state that the appellant had refused or would refuse to perform her duties as requested. The decision to dismiss was made on the basis of the appellant's letter in reply to Mrs Wee's original letter.

There is no indication that the Commission took into account the personal circumstances of the appellant at the time of dismissal or the impact of the dismissal on the appellant, as he would be required to do (see RRIA v CMEWU 69 WAIG 1027). That is a relevant factor, but what weight might be attached to it would be a matter for the Commission.

As to the failure to provide supervision by a chartered accountant, that was not relevant to the real ground of dismissal, and would not appear to be relevant to whether the dismissal was unfair, given the reasons why and the circumstances in which the dismissal occurred.

Insofar as the finding of lack of commitment also was concerned, there was some evidence that is referred to in ground 6 and which the transcript reveals on which the Commission might have found that there was a commitment. However, most cogently, there was no opportunity to show improvement after a warning, a warning based, as the appellant saw it was based, on disputed facts. That was unfair (see Bove v Scalzo Trading Co Pty Ltd (1997) AILR 3-462 (IRCA) per Patch JR).

The Commission at first instance did err, as alleged in the grounds of appeal, in finding that Mr Paul Wee had said that Ms Deng had told him that she did not want to do the Ezi Accounting work. He clearly said that Mrs Wee had told him that Ms Deng did not want to do the Ezi Accounting work.

The Commission did not have regard to the clear inconsistencies between Mrs Wee's evidence and what she was recorded as having said on tape. What the Commission also relied on was Mrs Wee's acceptance of the assessment that following receipt of the letter of 20 August 1995 it was not possible for Mrs Wee and Ms Deng, in Mrs Wee's judgment, to work together. The Commission also found that Mrs Wee bore some responsibility for the outcome. The evidence clearly reveals that.

Further, the Commission, having heard the tape, concluded that a breakdown in the relationship between the two was at an advance stage and was inevitable. That was a reasonable conclusion, on the evidence, as I have read it.

In my opinion, since the Commission at first instance made no finding about what occurred after the events of 10 August 1995, the Commission was not entitled to say that Ms Deng did not have sufficient commitment. What it was very much open to the Commission to find was that there was a breakdown in the relationship between Mrs Wee and Ms Deng, and therefore between the respondent and Ms Deng, since Mrs Wee was the respondent's managing director.

The Commission also observed correctly that the approach of Mrs Wee might be intimidating to the likes of Ms Deng. It would seem to me that it would be. Indeed, the transcript reveals Mrs Wee to have been aggressive and overbearing in cross-examination, and in the tape recording of the interview of 10 August 1995, that is also borne out, and that should have been a relevant factor of some weight

There was a matter in relation to which the Commission at first instance did not make a finding. This was whether Ms Deng had, after 10 August 1995, almost completed the work to be done, as her evidence and Mr Bahbah's (to some extent) reveals.

In addition, the Commission seems not to have considered or considered sufficiently the following relevant factors—

(1) That Mrs Wee (the respondent's managing director) had undertaken to conduct a review and had failed to.

(2) Whether such a review might have revealed that the work to be done had or had not been completed.

(3) That it was unfair, having undertaken to do so, to then without warning dismiss the appellant.

(4) That the letter of 20 August 1995 was a response to allegations made in writing and orally with which Ms Deng disagreed and sought apologies for remarks and other actions and as such was not evidence of lack of commitment.

(5) Whether, in all of the circumstances, a lack of commitment was proven.

(6) That the Commission took no or no sufficient account of the impact of dismissal upon the appellant.

(7) That the dismissal, in the end, was not for lack of commitment or for expressed lack of commitment.

(8) That the dismissal, in allowing no opportunity or reply, and by not giving a reason for dismissal, and for the reasons set out above, did not afford procedural fairness to the appellant.

(9) Insofar as there was any preference for the evidence of Mrs Wee over that of Ms Deng, which is not clear, the question of inconsistency between her evidence and of her statements on tape would require consideration.

I am of opinion that the Commission at first instance erred in the exercise of its discretion for the reasons which I have set out above. However, it is not possible for me to make findings on all matters necessary to determine this application.

It is necessary for the Commission, which saw the witnesses at first instance give evidence, to make any further findings of fact and to then weigh and consider all of the relevant factors in deciding whether the dismissal was unfair, in accordance, in my opinion, with these reasons and the law. I appreciate that this was not an easy matter to determine at first instance.

Any condonation of any misconduct was not relied on at first instance or upon this appeal.

The Commission's exercise of its discretion miscarried as to the amount of contractual benefits unpaid and which it ordered to be paid. Any final order to pay contractual benefits should be varied by substituting the amount of $151.63 for the amount of $131.53 as it appears presently in the first line of order (1) of the decision at first instance.

For those reasons, the exercise of the Commission's discretion did not otherwise miscarry, but I would allow the appeal for the reasons to which I have referred, although it might well have been argued.

The question of whether the respondent was estopped from denying that it should have conducted a review was not argued either. I have considered all of the submissions and all of the evidence and the Full Bench has listened to the whole of the tape recording (exhibit J10).

I would otherwise suspend the decision made at first instance and remit the matter to the Commission, as constituted at first instance, to be heard and determined according to law and these reasons.

COMMISSIONER J F GREGOR: I agree with the reasons for decision of His Honour the President and the order proposed, and have nothing further to add.

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 and the decision at first instance suspended and remitted back to the Commission, as constituted at first instance, to be heard and determined according to law and to these reasons.

Order accordingly

Appearances: Mr A Robson (of Counsel), by leave, on behalf of the appellant.

Mr D M Jones on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Katharina Yanyan Deng
Appellant

and

Sin-Aus-Bel Pty Ltd t/a The Ascot Inn
Respondent.

No 1702 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER J F GREGOR
COMMISSIONER C B PARKS.

8 April 1997.

Order.

This matter having come on for hearing before the Full Bench on the 5th day of February 1997, and having heard Mr A Robson (of Counsel), by leave, on behalf of the appellant and Mr D M Jones on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 8th day of April 1997 wherein it was found that the appeal should be upheld, it is this day, the 8th day of April 1997, ordered and directed as follows—

(1) THAT appeal No 1702 of 1996 be and is hereby upheld.

(2) THAT the decision of the Commission in application No 991 of 1995 made on the 8th day of November 1996 be and is hereby suspended, and the matter remitted back to the Commission, as constituted at first instance, to be heard and determined according to law and to these reasons.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers
Appellant

and

Burswood Resort (Management) Limited and Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers
Respondents.

No 180 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER J F GREGOR
COMMISSIONER C B PARKS.

2 May 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission at first instance, constituted by a single Commissioner. The Commission, on 20 January 1997, upon application No CR 409 of 1996, made an order by consent, which, formal parts omitted, was in the following terms—

"DECLARE—

That the Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers may not in terms of its registered rules—

1. enrol the employees whose job classifications are listed in clause 5—Wages of the Burswood Resort Casino Employees' Industrial Agreement 1993, Amendment Agreement 1995 ("the employees") as members; and
2. represent the industrial interests of the employees.

AND ORDERS—

That the Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers refrain from representing the industrial interests of the employees."

It is against that decision that the appellant now appeals on the following grounds—

"1. The Commission erred in law in that the purported Declaration and Order issued by the Commission was beyond the jurisdiction of the Commission as then constituted.
2. By Section 66 of the Act the President of the Commission has sole jurisdiction with respect to Union Rules and Declarations and Orders arising therefrom.
3. The Commission at first instance therefore erred in law and acted without jurisdiction.
4. The Appellant seeks that the Declaration and Order of the Commission in Matter CR409 of 1996 be quashed."

BACKGROUND

The respondent employer made application to the Commission, pursuant to s.44 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") in application No C 409 of 1996, naming the appellant, and the second respondent to this appeal, as respondents.

There was a dispute between the parties to this appeal about the right of the appellant to represent certain employees of the first respondent.

After a conference pursuant to s.44 of the Act, no agreement having been reached, there was a question as to whether the appellant organisation of employees might enrol employees whose job classifications were listed in clause 5—Wages of the Burswood Resort Casino Employees' Industrial Agreement 1993, Amendment Agreement 1995, as members and represent the industrial interests of the employees.

Relief was sought from the Commission at first instance by the respondent employer, including declarations and orders to

the effect that the appellant could not enrol the employees as members and represent their industrial interests.

On 20 January 1997, the matter came on for hearing and determination before the Commission at first instance. Mr Lovell, who appeared for the appellant (then a respondent), there conceded that the rules of the appellant organisation did not enable it to represent the employees. The parties had discussions and reached an agreement which was reduced to the form of a minute of agreed orders and handed to the Commission. From that minute, the Commission drafted its order, which was made by consent (see page 12 of the transcript at first instance).

This appeal was brought upon the grounds that the Commission at first instance had no jurisdiction to make the orders which were made, because s.66 of the Act confers exclusive jurisdiction on the President "with respect to all union rules and declarations and orders arising therefrom".

S.66 of the Act confers a wide jurisdiction on the President to make such orders or give such directions relating to the rules of the organisation, their observance or non-observance or the manner of their observance either generally or in the particular case as he considers to be appropriate. There is a specifically prescribed power to declare the true interpretation of any rule (see s.66(2)(d)).

However, the President's jurisdiction under s.66 may be invoked only by a limited and specifically prescribed class of persons. These are (see s.66(1))—

> "(a) a person who is or has been a member of an organization; or
>
> (b) a person who has applied for and not been admitted to membership in an organization; or
>
> (c) the Registrar acting on the complaint of or on behalf of a person referred to in paragraph (a) or of his own motion."

An organisation is defined in s.7 of the Act to mean an organisation that is registered under Division 4 of Part II of the Act. It was implicit in the submissions to us that the appellant is such an organisation. It is, of course, noteworthy that there is no right in the organisation to seek relief itself under s.66 of the Act, nor can an employer or organisation of employers seek relief under s.66.

Other facets of the rules of organisations are dealt with by the Full Bench (see s.55 and s.71 of the Act for example). Some "demarcations" are dealt with by the Full Bench too under s.72A of the Act.

There is no doubt that the Commission at first instance had jurisdiction to hear and determine the application before it, because the matter was an "industrial matter" as that is defined in the Act (see paragraph (e) of the definition of "industrial matter" in s.7, which reads as follows)—

> " "**industrial matter"** means, subject to section 7C, any matter affecting or relating to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter relating to —
>
> ...
>
> (e) the privileges, rights, or duties of any organization or association or any officer or member thereof in or in respect of any industry;"

In s.23(1) of the Act, there is power to deal with an "industrial matter" and to make any necessary order whenever it is appropriate to do so (see RRIA v AWU 67 WAIG 320 (IAC) per Brinsden J at page 321 and Kennedy J at page 325). S.23(1) reads as follows—

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

It was submitted that, in dealing with an industrial matter, the Commission may and sometimes must determine the constitutional coverage of organisations of employees—"unions". That has certainly been the case in this Commission, and a number of authorities were cited to us by the first respondent to illustrate that that has occurred. Certainly, this can occur in relation to "demarcation" disputes. The determination of such an issue is often particularly relevant where there is a question whether an organisation has the constitutional coverage to represent employees in claiming an award or seeking to register an agreement under s.41 of the Act. The same question could certainly arise in relation to an organisation of employers also. The Commission does determine the constitutional coverage of an organisation of employees.

The question of lack of power in the Commission to make the order which it did was not raised at first instance, the order having been made by consent. That that question had not been raised at first instance, however, was not raised as an objection upon this appeal. Indeed, it was specifically conceded that s.49(4) of the Act did not prevent the grounds of appeal in this matter being argued even though the order was made by consent at first instance and the question of the power to make the order not then raised. Further, as was conceded, the parties cannot by consent empower the making of an order which a court or tribunal has no power to make (see Thomson Australian Holdings Pty Ltd v Trade Practices Commission and Others [1980-1981] 148 CLR 150 at 163-165 (HC)).

It is my duty to interpret the provisions of the Act which are relevant, in particular s.23, s.44, s.66 and the s.7 definition of "industrial matter" by reading the same in terms of the whole of the Act. Further, it is necessary to construe those sections, attributing to the words their ordinary natural meaning, unless to do so would bring about an absurdity or ambiguity or would attribute a meaning repugnant to or inconsistent with the rest of the Act (see per Higgins J in Australian Boot Trade Employees Federation v Whybrow and Co and Others [1910] 11 CLR 311 at 341-342 (HC) and see also Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation 35 ALR 151 (HC) per Mason and Wilson JJ at pages 169-170).

The principle objects of the Act appear in s.6 of the Act, and the most apposite principle object is prescribed by s.6(c), which reads as follows—

> "The principal objects of this Act are —
>
> ...
>
> (c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;"

In statutory interpretation it is clear that an objects clause alone will not represent the object of the legislation. The intention of the Act is to be gleaned from the whole of the Act. In this case, the purpose of the Act is made clear through s.6(b) of the Act, which assists the interpretation of the Act (see Tickner v Bropho 114 ALR 409 (FC FC)).

In my opinion, there is nothing in s.23 of the Act or elsewhere in the Act which prohibits the Commission, constituted by a single Commissioner, from deciding in the course of an arbitration under s.32 or s.44 of the Act the right of an organisation of employers or employees to represent employers or employees before the Commission or to represent their industrial interests generally. I would, in fact, expect to see in the Act an express prohibition upon this being done and there is none.

Such a question might also be referred under s.27(1)(u) of the Act by the Commission at first instance to the Full Bench, although there is nothing in s.27(1)(u) which, in my opinion, makes such a reference mandatory.

However, s.32 and s.44 of the Act would not authorise the deciding of such a question in vacuo. There is, nonetheless, nothing express or implied in the Act which would prevent a question of coverage being decided in the course of an arbitration. S.6(c) of the Act would, if necessary, support such a construction of the Act.

In any event, and most tellingly for the purposes of the argument, there is no jurisdiction under s.66 of the Act for an organisation to apply to have the rules of another organisation interpreted. There is no jurisdiction to enable an organisation to apply to have its own rules interpreted, except if this is done by a member of that organisation. There is no jurisdiction under s.66 of the Act for an employer who might wish to raise the question of what an organisation's eligibility rule means under s.66 or for any organisation of employers to do the same. Under

s.66, there is no jurisdiction for an organisation of employees to seek an interpretation of the eligibility rule of an employer organisation. It can only be done by those persons prescribed in s.66, including persons who are or have been members of an employer or employee organisation. Put simply, if there were no power in the Commission, constituted by a single Commissioner, to construe eligibility rules so to determine coverage and rights of representation, there would be no ability for this to be determined under the Act during conciliation and/or arbitration, except by the use of s.27(1)(u) of the Act or an adjournment to enable the Registrar to make application under s.66(2)(d) of the Act.

Accordingly, since such disputes are not uncommon and require resolution, s.32 and s.44 of the Act, as well as s.27(1)(u) of the Act, do provide a mechanism for such resolution. However, any interpretation of the rules would have to be effected in the course of the resolution of an industrial matter under s.23 of the Act and by virtue of the powers exercisable under s.32 or s.44. Such a construction would promote the purpose of objects of the Act, particularly s.6(b) and s.6(c), in accordance with s.18 of the Interpretation Act 1984 (as amended).

An interpretation by a Commissioner in the course of exercising power under s.32 or s.44 of the Act would not normally, however, stand in the face of a declaration as to the interpretation of a rule or rules by the President under s.66 of the Act. That jurisdiction could not, however, because of s.34 of the Act, be used as an indirect appeal process against a decision by the Commission.

S.14(1) of the Act does not confer jurisdiction on the President, which is wider (in this case) than s.66 confers, although the President's jurisdiction under s.66 of the Act is very wide.

There was another interesting argument which Mr LeMiere, who appeared for the first respondent, submitted in these proceedings. That was that there was no exercise of any power to interpret the rules of the appellant. As I understood his argument, it was that there was, in any event, no interpretation of the rules. What occurred, as I understand the submission, was that the parties reached an agreement as to the matter in issue reflected in a minute of agreement which became, upon their application, an order made by consent. In other words, there was a concession as a foundation of the agreement by the appellant that it did not have industrial coverage or the right to represent under its rules. As a matter of fact, that is what occurred. There was no interpretation of the rules but an order defining coverage and representation made by consent.

It is unnecessary, too, therefore to consider other submissions made on behalf of the respondents.

For those reasons, I hold that the Commission at first instance did not err. I would dismiss the appeal.

COMMISSIONER J F GREGOR: I agree with the reasons for decision of His Honour the President and the order proposed, and having nothing further to add.

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 dismissed.

Order accordingly

Appearances: Mr G Halliwell, as agent, on behalf of the appellant.

Mr R LeMiere (of Counsel), by leave, and with him Mr L Levine (of Counsel), by leave, on behalf of the firstnamed respondent.

Ms K Denny on behalf of the secondnamed respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers
Appellant

and

Burswood Resort (Management) Limited and Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers
Respondents.

No 180 of 1997.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER J F GREGOR
COMMISSIONER C B PARKS.

2 May 1997.

Order.

This matter having come on for hearing before the Full Bench on the 11th day of April 1997, and having heard Mr G Halliwell, as agent, on behalf of the appellant, Mr R LeMiere (of Counsel), by leave, and with him Mr L Levine (of Counsel), by leave, on behalf of the firstnamed respondent, and Ms K Denny on behalf of the secondnamed respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 2nd day of May 1997 wherein it was found that the appeal should be dismissed, it is this day, the 2nd day of May 1997, ordered that appeal No 180 of 1997 be and is hereby dismissed.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Yilmaz Yahiya and Bridget Yahiya
Appellants

and

Graphic Holdings Pty Ltd
Respondent.

No 1730 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S A CAWLEY
COMMISSIONER A R BEECH.

11 April 1997.

Order.

This matter having come on for hearing before the Full Bench on the 10th day of April 1997, and having heard Mr R W Clohessy, as agent, on behalf of the appellants and Ms J M Hill (of Counsel), by leave, on behalf of the respondent, and the appellants herein having sought leave to discontinue the application for extension of time to file appeal books and to discontinue the appeal, and there being no objection by or on behalf of the respondent herein, and the Full Bench having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended) ("the Act"), that it refrain from further hearing or determining the application for extension of time to file appeal books upon the appellants herein withdrawing the appeal, and the parties herein having consented to waive the requirements of s.35 of the Act, it is this day, the 11th day of April 1997, ordered and declared that the Full Bench refrain from hearing or determining the application for an extension of time to file appeal books and the appeal herein upon the appellants having filed herein a notice of discontinuance of appeal No 1730 of 1996.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Yilmaz Yahiya and Bridget Yahiya
Appellants

and

Graphic Holdings Pty Ltd
Respondent.

No 1730 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S A CAWLEY
COMMISSIONER A R BEECH.

25 February 1997.

Order.

This matter having come on for hearing of an application for an extension of time to lodge appeal books before the Full Bench on the 24th day of February 1997, and having heard Mr R W Clohessy, as agent, on behalf of the appellants and Ms J M Hill (of Counsel), by leave, on behalf of the respondent, and the respondent herein having sought leave to have the hearing and determination of the application herein adjourned, and the appellants having no objection to the adjournment, and the Full Bench having determined for the just and expeditious hearing and determination of the application herein that the matter herein be adjourned, it is this day, the 25th day of February 1997, ordered and directed as follows—

(1) THAT the hearing and determination of the application herein be and is hereby adjourned to 9.00 am on Thursday, the 10th day of April 1997.

(2) THAT the appellants herein do file and serve within seven days of the 24th day of February 1997 an outline of submissions.

(3) THAT the respondent herein do file and serve an outline of submissions within three days thereafter.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Yilmaz Yahiya and Bridget Yahiya
Appellants

and

Graphic Holdings Pty Ltd
Respondent.

No 1730 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S A CAWLEY
COMMISSIONER A R BEECH.

31 January 1997.

Order.

This matter having come on for hearing of an application for an extension of time to lodge appeal books before the Full Bench on the 29th day of January 1997, and having heard Mr Y Yahiya on his own behalf and on behalf of Mrs B Yahiya as appellants and Ms J M Hill (of Counsel), by leave, on behalf of the respondent, and the appellants herein having sought leave to have the hearing and determination of the application herein adjourned, and the respondent having no objection to the adjournment, and the Full Bench having determined for the just and expeditious hearing and determination of the application herein that the matter herein be adjourned, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 31st day of January 1997, ordered and directed, by consent, that the hearing and determination of the application herein be and is hereby adjourned to 9.00 am on Monday, the 24th day of February 1997.

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.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch
Appellant

and

Greenco Pty Ltd.
Respondent.

No 1757 of 1996.

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

1 May 1997.

Order.

This matter having come on for hearing before the Full Bench on the 9th day of April 1997, and having heard Mr L Gandini, as agent, on behalf of the appellant and Ms V Paul (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 1st day of May 1997 wherein it was found that the appeal should be upheld, it is this day, the 1st day of May 1997, ordered—

(1) THAT appeal No 1757 of 1996 be and is hereby upheld.

(2) THAT the decisions of the Industrial Magistrate in complaint Nos 95 of 1996, 96 of 1996, 97 of 1996 and 98 of 1996 be and are hereby set aside, and a decision of "contravention proven" substituted in each complaint thereof.

(3) THAT complaint Nos 95 of 1996, 96 of 1996, 97 of 1996 and 98 of 1996 be and are hereby remitted back to the Industrial Magistrate to determine the questions of penalty and costs according to law and the reasons of the Full Bench.

(4) THAT leave be and is hereby granted to the appellant herein to amend the grounds of appeal in the terms of the document headed "Amended Grounds of Appeal" and filed herein on the 9th day of April 1997.

(5) THAT time be and is hereby extended to the appellant herein to file and serve appeal books to and including the 30th day of January 1997.

By the Full Bench.

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

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
Appellant

and

Greenco Pty Ltd
Respondent.

No 1757 of 1996.

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

1 May 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of an Industrial Magistrate, such an appeal being properly brought under s.84 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

Time was extended to enable filing and service of the appeal books, it being just and expedient to do so, particularly having regard to the fact that no injustice would be occasioned to the respondent by so deciding and that substantial injustice would be occasioned to the appellant by deciding otherwise.

The appellant organisation brought complaints in the Industrial Magistrate's Court at Perth against the respondent, an employer, alleging a number of breaches of the Electrical Contracting Industry Award No R 22 of 1978 (as amended and consolidated). There were five complaints that the respondent had not paid an employee, one Greg (sic) Knowles, overtime on five occasions and payment of an amount of $406.56 in total was claimed. That amount was amended to $338.00 upon the hearing of the complaints.

The complaints were dismissed by the Industrial Magistrate.

The appellant organisation now appeals against the decision on the following amended grounds—

"1. The Industrial Magistrate erred in law in dismissing the complaints once the Respondent admitted that it contravened/failed to comply with the relevant Award.

Particulars

1.1 Section 83(2) of the Industrial Relations Act 1979 sets out the powers of the Magistrate on hearing an application.

1.2 The Defendant admitted the facts alleged by the Complainant and hence the contraventions/failures to comply were proved, as required by Section 83(2)(a).

1.3 If a contravention/failure to comply is proved as required by Section 83(2)(a), a Magistrate has no power to then proceed to dismiss a complaint under Section 83(2)(b).

1.4 The Magistrate acted in an ultra vires manner in exceeding his power under, and/or misinterpreting the provisions of, Section 83(2), when he found the contraventions/failure to comply proved, but then dismissed the complaints.

2. The Industrial Magistrate erred in law in dismissing the application on the basis that the cause of action had been vexatiously instituted.

Particulars

2.1 The relevance of whether an action is instituted vexatiously is restricted to the question of costs as set out in Section 83(3).

2.2 A Magistrate therefore has no power to dismiss a complaint solely on the basis that he/she believes it is vexatiously instituted, as such a conclusion goes only to the issue of costs.

2.3 The Magistrate therefore confused his power to determine the matter under Section 83(2) with the issue of costs set out in Section 83(3).

3. The Industrial Magistrate erred in law in dismissing the complaints (despite the admissions from the Defendant) on the basis, that he felt—

i. a complaint should only be initiated if a Letter of Demand has been issued to a Defendant.

ii. the complaints (before the Court on this occasion) should not have been initiated unless the provisions of Clause 27 of the Electrical Contracting Industry Award R22 of 1978 were complied with. (ie. the dispute resolution clause)

iii. the Complainant Union required authorisation from the affected members to proceed with a complaint.

iv. the monies that were allegedly owing had been paid prior to the date of the hearing, and this resolved the matter.

v. the complaint had only been issued after the Defendant refused to enter into enterprise negotiations with the Complainant

which the Appellant says are irrelevant considerations for the purposes of Section 83(2).

PUBLIC INTEREST

1.1 It is in the public interest that the administration of justice in the Industrial Magistrates Court be executed according to law.

1.2 It is in the public interest that the Industrial Magistrates Court exercises its duties without imposing unnecessary or unlawful constraints upon Complainants.

ORDERS SOUGHT

1.1 The decision of Getting SM of 14th November 1996 to dismiss the complaints, be quashed.

1.2 The matter be remitted back to the Industrial Magistrates Court for proper hearing and determination."

Those parts of the grounds of appeal which refer to public interest are not relevant to this application.

One complaint, complaint No 99 of 1996, was withdrawn by consent when the complaints came on for hearing on 14 November 1996.

Upon the hearing before the Industrial Magistrate, Mr Young, the advocate for the applicant organisation, gave details of an agreement reached between the parties whereby the amounts referred to in the amended complaints having been paid the matter was settled on the basis that "no fines or costs would be pursued if the defendant pleaded guilty to the complaints" (see page 32 of the appeal book (hereinafter referred to as "AB")). Mr Young informed the court that if the defendant pleaded "guilty" or acknowledged the award breaches which had taken place, then the applicant organisation would not seek costs or penalty. He went on to add that it was his understanding that Ms Sanderson (the advocate for the defendant at first instance) would "argue mitigation" and would seek to have the complaints dismissed.

His Worship then observed that he was not certain that the complaints could be dismissed unless the court heard the complainant and defendant. His Worship asked Mr Young why he was not withdrawing the complaints (see page 32 (AB)).

Ms Sanderson indicated that she would be making submissions regarding "the powers this court has in relation to breaches which have been proven" (see page 34 (AB)). On the same page, she indicated that for the reasons submitted the respondent would oppose a "record of conviction" and would make submissions in detail regarding mitigating factors. The defendant then formally admitted all of the facts (see pages 35-36 (AB)).

His Worship then indicated that he required to be satisfied that there was a power to dismiss. Mr Young then purported to concede that there was a power to dismiss (see pages 36-37 (AB)).

What is, however, unequivocally clear is that the breaches alleged were being admitted, that the amounts claimed in the complaints had been paid, and that the learned Industrial

Magistrate was being invited, following such admissions, to dismiss the complaints instead of "recording a conviction". This he did for the reasons submitted to him and set out in his reasons for decision.

The real question is whether the learned Industrial Magistrate had power under the Act to dismiss the application. This was an application for enforcement of an award under s.83 of the Act. The powers of an Industrial Magistrate's Court in the court's general jurisdiction, which an application under s.83 of the Act is part of, are, except as otherwise prescribed by this Act, those provided for in the Local Courts Act 1904 (as amended) as if the proceedings were an action within the meaning of that Act. The practice and procedure to be observed by an Industrial Magistrate's Court when exercising general jurisdiction (as in this case) is that provided for under the Local Courts Act 1904 (as amended) for an action in that jurisdiction, "except as otherwise prescribed by or under this Act or another law".

S.83 of the Act contains a number of prescriptions for the conduct of proceedings under s.83 in the Industrial Magistrate's Court. The relevant section, for the purposes of this appeal, is s.83(2). That section reads as follows—

> "(2) On the hearing of an application under subsection (1) the industrial magistrate's court may, by order —
>
> (a) if the contravention or failure to comply is proved, issue a caution or impose such penalty as the industrial magistrate's court considers just but not exceeding $1 000 in the case of an employer, organization or association and $250 in any other case;
>
> (b) dismiss the application,
>
> and, subject to subsection (3), in any case with or without costs, but in no case shall any costs be given against the Registrar, a Deputy Registrar, or an Industrial Inspector."

The section must be read within the context of the whole of s.83 and also in the context of the whole of the Act. I also propose to construe the section in accordance with the ordinary natural meaning of the words, unless to do so causes ambiguity or absurdity, or would be contrary to the clear legislative intention of the Act (see Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation 35 ALR 151 (HC) per Mason and Wilson JJ at pages 169-170).

I should also say that the respondent's clear case was that the power to dismiss an application existed under s.83(2) of the Act and applied whether a contravention or failure to comply was proven or not. The appellant organisation's case was that s.83(2)(a) and (b) were mutually exclusive.

First, I must observe that a contravention or failure to comply with any provision of an award may be proved upon admission.

The hearing and determination of this application were proceedings in a court (see s.81CA and s.83(1), (2), (3) and (4) of the Act). An application constitutes "proceedings" under s.83. A proceeding is a proceeding in a court, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding. This complaint was a proceeding.

The word "may", which is used in s.83(2) of the Act, is a word which may be used in an enabling sense or be indicative that it grants a discretion (see the Interpretation Act 1984 (as amended), s.83, as to the latter sense). It is as always the real intention of Parliament that that must be ascertained. In this case, an examination of s.83(2) makes it plain that the word "may" is conferring a power and a duty on an Industrial Magistrate when he/she hears an application under the section to dispose of it in the manner prescribed in s.83(2) (see Finance Facilities Pty Ltd and Others v Federal Commissioner of Taxation [1970-1971] 127 CLR 106 (HC) per Windeyer J at pages 134-135 and Pearce and Geddes "Statutory Interpretation in Australia", 4th Edition, paragraphs 11.3 to 11.12).

It is quite clear from the words of the sub-section that, if the contravention or failure to comply is proved, then the Industrial Magistrate then, and only then, is empowered to issue a caution or impose a penalty. It follows that if the contravention or failure to comply is not so proven then the application should be dismissed. That is the only other course open to be taken under the section.

The respondent's case is and was that the word "dismiss" means to dismiss even after the complaint is proven. In other words, the submission is that there is a power in s.83(2) of the Act similar to what s.669 of The Criminal Code prescribes, which is as follows—

> "(1) When upon the trial of any person on a charge of any offence not punishable with more than 3 years' imprisonment, with or without any alternative punishment, such person shall plead guilty, or the court shall think the offence proved, if it appears to the court that regard being had to the youth, character, or antecedents of the offender, or the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment—
>
> (a) the court may, in the case of a first offender as defined by subsection (la), dismiss the indictment or complaint without proceeding to conviction and make an order to that effect, and if the court thinks fit may, upon such dismissal, order the offender to pay such costs of the prosecution as the court may think reasonable, and may direct when and to whom and in what instalments the amount ordered to be paid is to be paid, and such order may be enforced in the same manner as orders made on summary conviction; or
>
> (b) the court may, in the case of a first offender as defined by subsection (lb), convict him and discharge him—
>
> (i) unconditionally; or
>
> (ii) conditionally on his entering into one or more of the recognizances provided for in section 19(6), (7) and (8) of this Code;
>
> and either without payment of costs as mentioned in paragraph (a), or subject to the payment of such costs as the court may think reasonable.
>
> ...
>
> (2) Any order of dismissal or conviction and unconditional or conditional discharge under the provisions of this section is a bar to all further or other criminal proceedings for the same cause.
>
> ...
>
> (4) The term **"court"** in this section includes a court of summary jurisdiction."

The word "dismiss" implies an adjudication upon the issues between the parties in a manner favourable to the respondent not the applicant (see R v Nicholl 26 ACTR 19 at 22 (Sup Crt ACT) per Blackburn CJ). (I adopt that meaning with respect). S.152 of the Justices Act 1902 (as amended) is an example of the use of the word dismiss/dismissal with that meaning. In s.27 of the Act, which does not however apply to the Industrial Magistrate's Court, the word "dismiss" is used with the meaning which the appellant seeks to ascribe to the word in s.83(2) of the Act.

"Dismiss", however, in s.83(2), implies an adjudication upon the issues between the parties used in its ordinary sense. "Dismiss" does not mean "dismiss" as an alternative to finding the application proven. It does not mean that one can dismiss rather than impose a caution or a penalty as prescribed by s.83(2)(a). Even without the use of the word "or" as a disjunctive between s.83(2)(a) and s.83(2)(b) of the Act, it is clear that s.83(2)(a) and s.83(2)(b) prescribe two separate distinct courses. By s.83(2)(a), if the application is proven then a caution may be imposed or a penalty imposed on the respondent. If an application is not proven, then the clear alternative of dismissal obtains. There is nothing to suggest that "dismiss" means anything other than its usual meaning which is that expressed by Blackburn J in R v Nicholl (Sup Crt ACT) (op cit) and referred to above.

In my opinion, if "dismiss" were to be given a different meaning, the legislature would have to clearly say so, as it does in s.669 of The Criminal Code and in s.27(1) of the Act (which does not apply to the Industrial Magistrate's jurisdiction).

A similar but not identical provision to s.83(2) of the Act exists in s.84A(5) of the Act where "dismiss" plainly means "dismiss after an adjudication of the issues between the parties in favour of the defendant".

Thus, the clear unambiguous meaning of s.83(2) of the Act is that it empowers and requires the Industrial Magistrate to caution or penalise the defendant or respondent if the contravention or failure to comply is proved. Otherwise, the requirement is to dismiss the application, but only if the contravention or failure to comply is not proved.

There is no power in the Industrial Magistrate to dismiss an application under s.83 of the Act if the contravention or failure to comply is proved. In this case, the facts required to be proved were clearly admitted, as my summary above of what occurred in the proceedings before the learned Industrial Magistrate clearly establishes. Admissions made by agreement between the parties or made by counsel to the court are binding in civil proceedings. They may be retracted if the court gives leave to do so, but they were not in this case (see "Cross on Evidence" Australian Edition, paragraph 3160).

Further, in criminal proceedings, an accused person, either personally or by his/her counsel or solicitor, may admit on his/her trial any facts alleged or proved against him/her and such admission shall be proof of that fact without other evidence (see "Cross on Evidence" (op cit), paragraph 3170, and s.34 of the Evidence Act 1929 (as amended)).

Accordingly, whether these proceedings were criminal or civil, the Industrial Magistrate could and should have found any alleged contravention or failure to comply proven on the admission of counsel or an advocate.

By reference to the whole of the transcript of the proceedings at first instance, but particularly those submissions to which I have referred above, there was an unequivocal formal admission of the breach of the award alleged, except as it related to quantum, which was the subject of an application to amend which was agreed (see page 31 (AB)).

The proceedings quite unequivocally proceeded on the basis that it was submitted for the defendant and conceded for the complainant that there was power to dismiss. This occurred notwithstanding that the complaint was proven by unequivocal admission. The amounts claimed by the complainant had even been paid by the defendant.

It was submitted that the concession of the appellant (complainant at first instance) could be relied on. However, the parties cannot confer power upon the court to make orders which the court lacks power to make or are not in conformity with legal principle (see Thomson Australian Holdings Pty Ltd v Trade Practices Commission and Others [1980-1981] 148 CLR 150 at 163-164 (HC) per Gibbs CJ, Stephen, Mason and Wilson JJ).

Accordingly, since by the concession it was said to have been intended to confer power on the Industrial Magistrate to dismiss the complaint, when such complaint was proven by admission, as it was, then the concession was of no effect. This was because the concession purported to confer power on the Industrial Magistrate to make orders which he had no power to make, for the reasons I have set out above.

I would also add that the use of the word "guilty" or reference to finding the defendant guilty in these proceedings is entirely erroneous (see Mt Newman Mining Co Pty Ltd v AWU 57 WAIG 1542 (IAC)).

The Industrial Magistrate erred for those reasons in failing to find the complaints (except that which was withdrawn) proven and then dismissing the complaints. I would uphold the appeal. I would set the decisions to dismiss aside. I would substitute a decision of "contravention proven" in each complaint. I would remit the complaints back to the Industrial Magistrate to determine the questions of penalty and costs according to law and these reasons.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the Reasons for Decision of His Honour the President in draft form. I agree for the reasons set out therein with the decision to uphold the appeal. I also agree with the remedy proposed and have nothing to add.

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 to dismiss set aside, a decision of "contravention proven" substituted in each complaint, and the complaints remitted back to the Industrial Magistrate to determine the questions of penalty and costs according to law and these reasons.

Order accordingly.

Appearances: Mr L Gandini, as agent, on behalf of the appellant.

Ms V Paul (of Counsel), by leave, on behalf of the respondent.

PRESIDENT—
Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett and Tracey Barrett
Applicants.

and

The Western Australian Builders Labourers Painters Plasterers Union of Workers
Respondent.

Nos 776 and 777 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

29 April 1997.

Order.

These matters having come on for hearing before me on the 29th day of April 1997, and having heard Mr I Barrett on his own behalf and as agent for Tracey Marie Barrett, and Ms J Harrison on behalf of the respondent organisation, and having reserved my decision on these matters, and having determined that my reasons for decision will issue at a future date, it is this day, the 29th day of April 1997, ordered that application Nos 776 and 777 of 1997 be and are hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett and Tracey Barrett
Applicants.

and

The Western Australian Builders Labourers Painters Plasterers Union of Workers
Respondent.

Nos 776 and 777 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

30 April 1997.

Reasons for Decision.

THE PRESIDENT: These are applications by the abovenamed applicants, Ian Barrett and Tracey Barrett, pursuant to s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), seeking the stay of operation of a decision of the Industrial Magistrate made on 19 March 1997 in the Industrial Magistrate's Court at Perth in complaint No 154 of 1996.

By that decision, His Worship amended complaint No 154 of 1996 by deleting the words "Ian Barrett and Tracey Barrett" from the name of the defendant as it appeared in the complaint, which was as follows—

"Ian Barrett and Tracey Barrett trading as Barrett Pty Ltd".

A second complaint was struck out.

Proceedings were adjourned to enable the company, Barrett Pty Ltd, to be served, Ian Barrett and Tracey Barrett having been previously served.

The decision also involved a dismissal of their application for costs.

The matter was then listed for hearing on 30 April 1997, which is the day after these applications for a stay were heard.

In the meantime, the applicants herein, who are husband and wife, filed a notice of appeal against the decision of His Worship.

The appeal complains that the defendants as charged have been replaced by a separate entity, the second party never having been charged by summons and that that was an error. In short, as I understand the grounds of appeal, the amendment was not the substitution of the proper name for an incorrect name, but the substitution of a new entity. That is what I distilled from the grounds of appeal, which were not altogether clear. I was also informed that the decision not to award costs was the subject of appeal.

Mr Ian Barrett appeared as agent for Ms Barrett and on his own behalf in these applications for a stay of His Worship's decision.

It was submitted by him that there was a serious issue to be tried because there had been substitution by the Industrial Magistrate in the complaint of a party who was not a party to the proceedings, that party being the company, Barrett Pty Ltd (hereinafter referred to as "the company"). In other words, it was submitted that His Worship's decision was not to effect a mere alteration of the name as was properly done in Owners of Johnston Court Strata Plan No 5493 v Dumancic 70 WAIG 1285 at 1287 (IAC).

It was also submitted by Mr Barrett that the balance of convenience favoured the applicants because the question of costs could not be resolved if a stay were not granted.

It was also, at least as I understood the submissions, submitted that it was generally unjust to the company and to the applicants to allow these proceedings to continue, particularly since it would pre-empt the appeal. The grounds of the applications reflect these submissions.

For the respondent, it was submitted by Ms Harrison that there was not a serious issue to be tried, the amendment of the name of the defendant being merely that, and in accordance with authorities such as Owners of Johnston Court Strata Plan No 5493 v Dumancic (IAC) (op cit).

Further, it was submitted by Ms Harrison for the respondent that the hearing of the complaint would be unduly delayed, it having been listed for 30 April 1997, if a stay of the decision of the Industrial Magistrate occurred.

It was, in addition, submitted that the respondent, if I made an order staying the operation of His Worship's decision, would suffer detriment because not only would the hearing of this complaint be delayed, but so also would other applications.

It seems to have been assumed for the purposes of these proceedings that the determination of the Industrial Magistrate to permit the amendment or substitution was a decision, as that is referred to in s.84(1) of the Act.

Further, for the respondent, there was material placed before me to the effect that the company was duly incorporated, and that, at least at a material time in July 1996, both the applicants were directors of it. Not all of that material was before the Industrial Magistrate, and I do not know that there is a great deal of weight I can attach to it.

The principles which apply to applications under s.49(11) of the Act are well established (see CSA v WA Centre for Pathology and Medical Research and Another 76 WAIG 60). The principles are as follows—

(1) It is for the applicant for a stay to establish that the discretion of the Commission should be exercised in his/her favour.

(2) The applicant must establish that there is a serious issue to be tried.

(3) The applicant must establish that the balance of convenience lies with the applicant.

(4) The main principle to be considered is that a successful party should not be lightly deprived of the fruits of his/her "litigation".

(5) The Commission is bound to apply and consider s.26(1)(a), s.26(1)(c) or sometimes s.26(1)(d) of the Act.

(These principles were also laid down in Gawooleng Dawang Inc v Lumpton and Others 72 WAIG 1310).

I am persuaded that there is a serious issue to be tried as to whether this amendment constituted an amendment to the name or the substitution of another party and whether to do so was an error of law. The question of costs was also said to be a question raised in the grounds of appeal.

The balance of convenience raises different questions. It is trite to say that Mr Barrett and Ms Barrett and Barrett Pty Ltd are three different legal persons. I have difficulty in understanding how the applicants are inconvenienced or suffer detriment if the company is now a defendant and the operation of the decision whereby the company's name was amended, or, alternatively, the company became a defendant is not stayed. What happens is that the complaint is heard and the company defends itself and is either successful or unsuccessful in so doing. In any event, the applicants are no longer the subject of the complaints and are not at risk of penalties being imposed or of other orders being made against them. It has not been established, therefore, to my satisfaction that there would be any inconvenience or detriment to the applicants herein as a result. Indeed, the fact that they are no longer defendants in the action but another person, namely the company, is, might be said to be of substantial benefit to them.

I am not therefore satisfied that the balance of convenience lies with the applicants.

On the other hand, the unnecessary stay of the operation of the decision would, of course, result in these proceedings not continuing and would result in inconvenience to the respondent.

I am not at all persuaded that the respondent will suffer inconvenience in relation to others of its members who may or may not have the right to make complaints against the company, and, indeed, such a consideration is irrelevant.

Further, I am disposed to follow the authority Re Rozenes; ex parte Burd [1994] 68 ALJR 372 (HC) where Dawson J held that if there are no exceptional circumstances the High Court would not permit the fragmentation of a criminal trial by entertaining proceedings to contest the rulings of the trial judge. That is another and further reason why, even though these proceedings are not criminal proceedings, I would not be disposed to grant the applications for a stay. It seems to me that it would unnecessarily fragment proceedings against a separate individual party at the request of persons who are now not a party to the proceedings.

For all of those reasons, the applicants have not established that the respondent should be deprived of the fruits of its litigation, or that the equity, good conscience and substantial merits of the case lie with them.

I have taken into account all of the submissions of the parties.

As to the question of costs, if it is competent that an appeal lie against it under s.84 of the Act, then the applicants have their remedy and the balance of convenience does not favour the applicants in that regard because the stay of the dismissal of the application for costs would be of no effect.

For those reasons, I dismissed the applications.

Appearances: Mr I Barrett on his own behalf and as agent for Tracey Marie Barrett.

Ms J Harrison on behalf of the respondent organisation.

PRESIDENT—
Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

Building Trades Association of Unions of Western Australia
(Association of Workers)
Respondent.

No 171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

22 April 1997.

Order.

This matter having come on for a further directions hearing before me on the 22nd day of April 1997, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Ms J Quinlivan (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 22nd day of April 1997, ordered and directed, 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 13 and 14(d)(3) 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 30th day of June 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

Building Trades Association of Unions of Western Australia
(Association of Workers)
Respondent.

No 171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

8 April 1997.

Order.

This matter having come on for a further directions hearing before me on the 8th day of April 1997, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A Drake-Brockman (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), and the parties herein having consented to the order herein, it is this day, the 8th day of April 1997, ordered and directed, by consent, that application No 171 of 1997 be and is hereby adjourned to 9.00 am on Tuesday, the 22nd day of April 1997 for a further directions hearing.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

Building Trades Association of Unions of Western Australia
(Association of Workers)
Respondent.

No 171 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 A Drake-Brockman (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), and the parties herein having consented to the order herein, it is this day, the 6th day of March 1997, ordered and directed, by consent, that application No 171 of 1997 be and is hereby adjourned to 9.00 am on Tuesday, the 8th day of April 1997 for a further directions hearing.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

The Australian Municipal, Administrative, Clerical and
Services Union of Employees, WA Clerical and
Administrative Branch
Respondent.

No 458 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

18 April 1997.

Reasons for Decision.

THE PRESIDENT: This is an application by the Registrar for orders, made with the consent of the respondent organisation, such orders being sought under s.66(7) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The Commission, on 17 April 1996, by order No 458 of 1996, made an order, by consent, disallowing rules 29(b), 31(1), 31(2)(b), 31(3) and 32(a)1. The applicant and respondent organisation seeks an order that that order be cancelled.

There are two bases for the application.

First, it is common ground that the rules to be disallowed in the consent order, order No 458 of 1996, were incorrectly referred to in the application. Since that order was made, there was, I was informed, a search of the Commission's records which has revealed that the rules referred to in the order were replaced by a new set of rules in application No 1305 of 1993.

In fact, the position is this. By order dated 2 December 1993, the Full Bench ordered that the Registrar be authorised to register alterations to rules 1 and 5 of the rules of the respondent organisation. Subsequently, that was effected.

By application No 1306 of 1993, the respondent organisation sought to amend its rules by substituting new rules, with the exception of rules 1 and 5 which were the subject of the application to the Full Bench to which I have referred. On 2

December 1993, the Registrar registered a complete substitute set of rules other than the new rules 1 and 5 referred to above.

The rules sought to be disallowed in the application before me, and properly disallowable, are those rules which were altered in 1993 and numbered then as they are referred to in this application. They are also properly disallowable.

The second basis of the application is that I issue a further order in terms of the minute of consent order. That order, if it were made, would result in me disallowing rules 26 a.i, 28 a, 28 b.ii.1.2, 28 c, 28 f and 28 h of the rules of the respondent organisation instead of rules 29(b), 31(1), 31(2)(b), 31(3) and 32(a)1.

In application No 458 of 1996, by consent, the Commission ordered that rules 29(b), 31(1), 31(2)(b), 31(3) and 32(a)1 of the rules of the respondent organisation be disallowed.

What occurred is that in 1993 new rules numbered differently were substituted. Accordingly, the wrong rules were disallowed as a result of the consent order in application No 458 of 1996. That order was perfected by being deposited in the Office of the Registrar on 18 April 1996 (see s.36 of the Act).

Again, the order sought making orders, cancelling that order and disallowing the rules designated now by their correct numbers are sought by consent.

The question arises as to whether I can now "cancel" that order.

S.34(4) of the Act provides as follows—

> "(4) Except as provided by this Act, no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever."

S.27(1)(m) of the Act provides as follows—

> "(1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —
>
> ...
>
> (m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;"

Certainly, perfected orders must generally be varied only upon appeal.

The court also has inherent jurisdiction to amend an order which turns out to be incorrect by the inadvertence of counsel, or by the mistake of a Judge which is not corrected by counsel, so as to rectify situations of injustice (see Monaco and Another v Arnedo Pty Ltd and Another (1994) 13 WAR 522 at 524 (FC)), or to amend an order made in a form which does not correctly express its intention (see Biala Pty Ltd and T S Holdings Pty Ltd v Mallina Holdings Ltd (1989) 2 WAR 381 at 390 (FC)).

It is interesting to note that it has been held that the court has power to vary an interlocutory order which has passed the seal of the court (see Pillinger v Ropework Services International Pty Ltd (1989) (unreported) (Library No 7976) (Sup Crt WA)).

The Commission does not have inherent jurisdiction in these matters, but s.27(1)(m) of the Act confers a power in similar terms.

What occurred here was that there was inadvertently a failure to identify the rules to be disallowed by consent by their correct numbers, a situation as was contemplated in Monaco and Another v Arnedo Pty Ltd and Another (FC) (op cit) and within the power of the Commission under s.27(1)(m) of the Act.

The proper application was really one under application No 458 of 1996 to correct the order originally made, not to cancel it, since I made that order. However, if I were to correct the order it would avoid a situation of injustice.

What I will therefore do is to treat this application as such and correct the order, by consent, so that the rules to be disallowed are correctly identified in the order, rather than purporting to cancel the order and substitute another one. That would be able to be achieved by the application of s.26(1)(a) and s.26(2) of the Act.

I will make such an order, notwithstanding the time which has elapsed between the date of the original consent order and this application.

I will issue a minute to reflect these reasons. However, if there are any difficulties for the parties in my taking this course, they may make submissions. Unless my Associate is informed by close of business on 22 April 1997, I will assume that they do not.

Order accordingly

Appearances: Ms J H Smith (of Counsel), by leave, on behalf of the applicant.

Mr R Dhue on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

The Australian Municipal, Administrative Clerical and Services Union of Employees, WA Clerical and Administrative Branch
Respondent.

No 458 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

18 April 1997.

Correcting Order.

This matter having come on for a directions hearing before me on the 8th day of April 1997, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr R Dhue on behalf of the respondent, and having reserved my decision on the matter, and reasons for decision being delivered on the 18th day of April 1997, and pursuant to the powers conferred on the Commission under s.27(1)(m) of the Industrial Relations Act 1979 (as amended) ("the Act"), it is this day, the 18th day of April 1997, ordered and directed, by consent, that the order issued by the Commission in respect to application No 458 of 1996 made on the 17th day of April 1996 shall be corrected by substituting the following orders—

(1) THAT I declare that rules 28 a, 28 b.ii.1.2, 28 c, 28 f and 28 h of the rules of the abovenamed respondent organisation are contrary to or inconsistent with s.64A of the Act.

(2) THAT I declare that rule 26 a.i 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 26 a.i., 28 a, 28 b.ii.1.2, 28 c, 28 f and 28 h of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of April 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Reginald Thobaven
Applicant

and

The West Australian Locomotive Engine Drivers, Fireman's and Cleaner's Union of Workers
Respondent.

No 527 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

25 March 1997.

Reasons for Decision.

THE PRESIDENT: On 24 March 1997, I conducted a directions hearing in this matter and heard an application by the applicant for interim orders. The application for final orders

and for interim orders was, of course, made under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The applicant also sought an order that meetings of the Finance Committee be held in accordance with rule 26 of the registered rules.

FINANCE COMMITTEE MEETINGS

It was conceded that Finance Committee meetings had not been held for some time. Mr Hathaway, on behalf of the respondent organisation, explained that they were not so held because the financial records of the respondent organisation had been locked in the safe which could not be unlocked because the now dismissed General Secretary, Mr McPolin, had the key. This was denied in a letter received from Mr McPolin. Subsequently, I was informed, a locksmith was engaged to open the safe and fitted a new lock. There is now therefore an availability of the financial records so that Finance Committee meetings can be conducted. They are required under rule 26 to be conducted once each month. One such meeting has been held this year on 18 March 1997, and Mr Hathaway gave an undertaking on behalf of the respondent from the bar table that Finance Committee meetings would now continue to be held monthly in accordance with the rules.

MEETINGS OF THE GENERAL COMMITTEE

The only interim order sought under this head was an order that meetings of the General Committee be conducted at the time designated by the General Committee. A number of undisputed facts seem to have emerged from the evidence given from the bar table. (That evidence was accepted by me where it was not contradicted by either side on the basis of R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Melbourne and Metropolitan Tramways Board [1965] 113 CLR 228 (HC) where the whole High Court held that a Commissioner was entitled to act on the assertions of advocates without hearing other evidence; but if the assertions were challenged, it would at least be imprudent on the part of the Commissioner not to examine the matter further).

(1) On 9 December 1996, the General Committee (see the Minutes of the General Committee, exhibit 2) passed a resolution that meetings of the General Committee take place in 1997/1998 on alternate Tuesdays starting at 11.30 am as from 7 January 1997.

(2) That Standing Orders, which are annexed to and form part of the rules of the respondent organisation, provides by Standing Order 39 as follows—

> "39. The General Committee shall sit at 7.15 p.m. and close at 9.30 p.m. unless a majority of members present decide by resolution to extend the sitting. Such extension shall be deemed to be for a period of fifteen (15) minutes; at the expiration of such period and at each 15 minute period thereafter the question of further extension shall be decided by resolution."

For a number of years meetings have been held in accordance with those Standing Orders.

(3) That with the exception of some Special General meetings called by the General President this year, the General President, Mr David Kimberley Hathaway, has given notice of 10 general meetings this year held on each Monday fortnightly, except where a public holiday falls on a Monday, in accordance with Standing Order 39.

(4) Generally, those 10 meetings have been attended by five members of the General Committee, whilst seven members of the General Committee have attended, pursuant to the resolution of 9 December 1996 fixing the meetings for alternate Tuesdays, on those Tuesdays at 11.30 am.

As a result, there is no quorum at the meetings which the General President attends and would purport to preside over, and the business of the respondent organisation cannot be transacted at all through the General Committee as the rules prescribe (see rule 22(a)).

SHOULD INTERIM ORDERS BE MADE?

In Corse v Robinson and CSA (Application No 1285 of 1996) (unreported) (delivered 6 December 1996) at pages 5-6 (a decision of the President), there appear the principles which apply to applications for interim orders. I apply those principles in this matter.

INTERIM ORDERS—FINANCE COMMITTEE

It is, if I may say so, no answer to say that no Finance Committee meeting could take place because the financial records of the respondent organisation were locked away and there was no key available.

Rule 26 still requires that the meetings be held. If such meetings were held, reports about current financial matters and the position with regard to the records locked away could still be entertained and heard by the Finance Committee. Of course, the safe might have been opened some time ago, but Mr Hathaway submitted that this was an expense which they had hoped to avoid.

I make no finding on that matter at this time. However, since a Finance Committee meeting has now been held on 18 March 1997, and since Mr Hathaway has undertaken that meetings will now continue, and rule 26 requires that they take place monthly, I am not persuaded that I should make the interim orders sought concerning the Finance Committee.

Of course, there is a serious issue to be tried on a hearing and determination of the application for final orders that rule 26 was breached.

The application, too, has been less prompt than one might have expected. However, if the matter has been resolved and the rules complied with, at least temporarily, within and by the respondent organisation itself, s.6(f) of the Act is therefore advanced by my not making an interim order at this time, because the respondent organisation itself has commenced to comply with rule 26 and I am told will continue to do so. Further, having regard to s.26(1)(a) and s.26(1)(c) of the Act, the interests of the members and the respondent organisation do not require me to make an order if the rule is now being complied with and is to be complied with. Further, no detriment is now occurring if the rule is being complied with.

I am not persuaded therefore that I should make the interim orders sought in relation to the Finance Committee, and I dismiss the application at this time that such an order be made, such dismissal being in accordance with the provisions of s.26(1)(a) of the Act.

Whether I make a final order is, of course, entirely another matter.

GENERAL COMMITTEE

General Committee meetings can be fixed by the General Committee under rule 22(a), it might be argued. Certainly, the General President can call meetings of the General Committee if such a course is necessary (see rule 16(f)).

Further, the General Secretary is to call meetings of the General Committee when required (see rule 18(f)). That, however, might mean that he calls meetings when he is required by the General President, or, perhaps, the General Committee, to do so. However, I make no finding on that point at this time.

On 9 December 1996, the resolution passed to fix the new dates and times for meetings of the General Committee was passed. The General President ruled that such resolution was contrary to Standing Orders which fix the date and the time for meetings of the General Committee. However, that ruling was dissented from and the motion of dissent was passed.

What is now occurring, as I have said, is that part of the General Committee attends for meetings at the time fixed in Standing Order 39 and part at the time fixed by the resolution of the General Committee passed on 9 December 1996.

As both Mr Hathaway and Mr Thobaven submitted, the respondent organisation's governing apparatus is simply not working. That is because the General Committee does not meet as a General Committee and does not deal with matters as a General Committee.

Standing Order 34 reads as follows—

> "34. It shall, in cases of necessity, be competent, by a majority of the Officers and Delegates present, for the meeting to suspend any Standing Order herein contained, provided the effect of such suspension shall not be the rescinding of any resolution previously adopted by the Union; and provided further that the suspension of Standing Orders shall be limited in its operation to the particular purpose for which such suspension has been sought."

I am not persuaded that the resolution to change the meeting dates and times on a more or less indefinite basis, on the

submissions so far put to me, is a competent resolution within the prescription of Standing Order 34. I am not persuaded that the suspension of Standing Orders can occur for an indefinite period. I am not therefore satisfied that there is a serious substantial case to be tried on that point. I am therefore not satisfied that it is in the interests of the respondent organisation or its members that I should make such an interim order if I am not satisfied that Standing Orders support the resolution of 9 December 1996.

The objects of the Act are, for that same reason, not advanced by my making such an order.

Further, for that reason, the detriment to the respondent organisation, if the resolution is not established as being intra vires, by my making such an order, outweighs any detriment to the applicant. However, it is not established that the applicant will suffer any detriment by my not making the interim orders sought.

The order, too, temporarily at least, if made, could pre-empt the application for a final order and the determination of that application.

The order sought is not therefore one that, upon a proper consideration of s.26(1)(a) of the Act and to all the factors to which I have referred, I am persuaded that I ought to make any interim order.

The respondent organisation has not sought that I make an interim order that meetings occur at the date and time fixed by Standing Order 39 in the interim. I therefore do not propose to make such an order.

I should add that any findings or conclusions which I have made or reached in the course of these reasons relate only to the application for interim orders, and cannot, in any way, influence what findings I make or conclusions I reach upon the final hearing and determination of this matter, since the reaching of those conclusions and the making of appropriate findings will depend on the evidence before me upon the final hearing and determination of this matter and the submissions of law and fact which I will hear upon that final hearing and determination.

For those reasons, I will dismiss the application for interim orders.

I have also made directions for the disposition of this matter under s.27(1)(o) and s.27(1)(v) of the Act.

Order accordingly

Appearances: Mr M R Thobaven on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Reginald Thobaven
Applicant

and

The West Australian Locomotive Engine Drivers, Fireman's and Cleaner's Union of Workers
Respondent.

No 527 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

25 March 1997.

Order.

This matter having come on for a directions and interim orders hearing before me on the 24th day of March 1997, and having heard Mr M R Thobaven on his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having reserved my decision on the application for interim orders, and my reasons for decision having issued on the 25th day of March 1997, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, it is this day, the 25th day of March 1997, ordered and directed as follows—

(1) THAT the hearing and determination of application No 527 of 1997 be and is hereby adjourned to 10.00 am on Monday, the 7th day of April 1997.

(2) THAT the respondent organisation do give discovery and inspection to the applicant herein on or before the 1st day of April 1997 of the following documents—

(a) All Minutes, Executive and General Committee both confirmed and not confirmed, from and including November 1996.

(b) All minutes from and including September 1996 that have been withdrawn on the pretext of being re-issued.

(c) All correspondence sent to delegates regarding meeting times since November 1996.

(d) All correspondence sent informing delegates of meetings, special or otherwise, since September 1996.

(e) All correspondence sent to Delegate Conference Delegates in regards to the special meeting that was directed to take place by the General Committee on the 30th day of January 1997.

(f) All correspondence between Westrail and the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers dealing with meeting times since November 1996.

(3) THAT leave be and is hereby granted to the applicant to amend Schedule 1 to the application herein by substituting for the date "16 November 1996" the date "9 December 1996" wherever the date "16 November 1996" is referred to in Schedule 1.

(4) THAT the application by the applicant for interim orders be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Reginald Thobaven
Applicant

and

The West Australian Locomotive Engine Drivers, Fireman's and Cleaner's Union of Workers
Respondent.

No 527 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

10 April 1997.

Reasons for Decision.

THE PRESIDENT: This is an application by Mr Martin Reginald Thobaven, a member of the respondent organisation, which is itself an organisation registered under s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), brought under s.66 of the Act.

Mr Thobaven, the applicant, complains about the observance and non-observance by the respondent organisation of rules 23 and 26 of its rules.

The applicant now seeks a number of orders—

(1) That meetings of the General Committee be conducted at the time resolved as appropriate by the General Committee at its meeting on 9 December 1996.

(2) That the resolution of the General Committee of 30 January 1997 requiring that a Special Delegate "Conference" be held be acted upon.

(3) That the Commission, constituted by the President, declare that the General President acted beyond his powers in declaring the General Committee decision of 9 December 1996 "Null and Void" insofar as it referred to meeting times.

The applicant announced that he would not be pursuing his claim for an order that meetings of the Finance Committee now be held in accordance with rule 26 of the respondent organisation's rules because a meeting had recently been held and because the General President, Mr David Kimberley Hathaway, had announced in this Commission that there was now no obstacle to rule 26 being complied with.

BACKGROUND

This application follows upon a substantial number of applications made to the Commission relating to the observance, non-observance or manner of observance of the respondent organisation's rules.

It is fair to say that the respondent organisation is only partly functional presently.

On 9 December 1996 (exhibit 2) (wrongly designated 16 November 1996), there was a meeting of the General Committee of the respondent organisation. There was a motion moved by the General Vice President, Mr Kevin Warren Jarrett, that meetings of the General Committee for the 1997/1998 term be held on alternate Tuesdays "starting at 1130 hours as from 7 January 1997". The Chairman, Mr D K Hathaway, ruled the motion out of order as being inconsistent with Standing Order 39. Standing Order 39 reads as follows—

"39. The General Committee shall sit at 7.15 p.m. and close at 9.30 p.m. unless a majority of members present decide by resolution to extend the sitting. Such extension shall be deemed to be for a period of fifteen (15) minutes; at the expiration of such period and at each 15 minute period thereafter the question of further extension shall be decided by resolution."

Mr Jarrett moved to disagree with the Chairman's ruling in accordance with Standing Order 29. The motion disagreeing with the ruling was carried, and the original motion moved by Mr Jarrett was then put and also carried.

What then has followed is that one portion of the membership of the General Committee has attended for meetings in accordance with that resolution on alternate Tuesdays. Other members of the General Committee have attended for General Committee Meetings in accordance with Standing Order 39, so that the government of the respondent organisation has been seriously hampered. (My reasons for decision in Veenstra v WALEDF&CU (application No 560 of 1997) (unreported) decision delivered 3 April 1997 give some of the background to those matters).

On 30 January 1997, the General Committee passed a resolution that a Special Meeting of delegates be convened as soon as possible (see exhibit 7, minute page 18/97). No such meeting has been convened.

The Triennial Delegate Meeting (referred to as a "Conference") is the instrument of the supreme government of the respondent organisation and meets triennially. The next such meeting is fixed for August 1997.

However, Special Delegate Meetings may be summoned by the General Committee or by referendum giving 21 days notice where possible to each District (see rule 8). No such Special Delegate Meeting has been summoned in accordance with such resolution.

On Saturday, 5 April 1997 at 1312 hours, a Special General Committee Meeting was called by the General President, notice being given by telephone. At that meeting, it was resolved, inter alia, that the resolution appearing on minute page 18/97 in relation to the calling of a Special Delegates Conference be rescinded. Further, a resolution was passed rescinding the motion (page 284/96) that meetings of the General Committee for the 1997/1998 term be held on alternate Tuesdays, starting at 1130 hours, as from 7 January 1997. Thus, if that resolution is valid, there is no resolution which purports to alter the time at which Special General Meetings are held. Further, there is no longer a resolution that a Special Meeting of delegates be called, if the rescinding motion is valid.

However, the applicant submitted that the resolutions rescinding the two earlier resolutions were not valid, because even though the meeting of 5 April 1997 was a Special General Meeting, it was required to be held as was required by Standing Order 39. More cogently, so the submission went, the rescinding resolutions were passed contrary to Standing Order 35. Standing Order 35 reads as follows—

"35. No resolution passed by the Union shall be again debated or reconsidered unless—

(a) Notice of motion is given in writing at an Ordinary Regular Meeting of the Union and included in minutes of such meeting, such notice to be considered at the next Regular Meeting.

(b) An absolute majority of the members present at the meeting at which the notice of motion is debated so decide.

(c) It shall be competent (notwithstanding the provisions above mentioned) for the Executive Officers of the Union to decide that notices of motion shall be dealt with at any Special or Ordinary Meetings of the Union should such a course be considered by them to be necessary. Always provided that each Delegate or Officer entitled to vote on the question shall have been duly notified of the meeting and the nature of the business to be transacted thereat."

As a matter of fact, there is no evidence that notice of motions to rescind was given in writing in accordance with Standing Order 35. There is no evidence that an absolute majority of the members present at the meeting passed the motions to rescind.

Further, it is quite clear from the minutes, and, indeed, it was not in issue, that the matters were not considered at an Ordinary Meeting, but at a Special Meeting of the General Committee. I so find.

It is quite clear, too, that no notice of motion was given in writing at an "Ordinary Regular Meeting" or included in the minutes of that meeting, nor was such notice considered or to be considered at the "next Regular Meeting".

Further, there is no evidence that Standing Order 35(c) was complied with, and, indeed, it is clear from the minutes of meeting that it was not. In particular, there was no written notices of motion as required.

Standing Orders are part of the rules of the respondent organisation. As such, the members of the respondent organisation are bound by them under s.61 of the Act and they cannot be altered except under s.62(3) of the Act. I interpret the Standing Orders as part of the rules and in the context of the whole of the rules in accordance with the principles laid down in R v Aird; Ex parte AWU [1973] 129 CLR 654 (HC). The Standing Orders are required under Standing Order 36 to be observed by the General Committee. The word "shall", having a clear mandatory sense, is used. Of course, Standing Order 34 enables the General Committee to suspend Standing Orders in cases of necessity. Standing Order 34 reads as follows—

"34. It shall, in cases of necessity, be competent, by a majority of the Officers and Delegates present, for the meeting to suspend any Standing Order herein contained, provided the effect of such suspension shall not be the rescinding of any resolution previously adopted by the Union; and provided further that the suspension of Standing Orders shall be limited in its operation to the particular purpose for which such suspension has been sought."

However, if one reads Standing Order 34 in the context of the whole of the Standing Orders and of all of the rules, the suspension of Standing Orders can only be competent—

(1) If the meeting which suspends Standing Orders does so by a majority of the officers and delegates present.

(2) If the effect of such suspension is not the rescinding of any resolution previously adopted by the union.

(3) Provided that the suspension of Standing Orders shall be limited in its operation to the particular purpose for which such suspension has been sought.

What then is the effect of the various resolutions to which I have referred above?

First, Standing Orders can be suspended to change the time of a meeting, but not to change the time generally prescribed

for meetings in Standing Orders. Standing Order 34 plainly limits the suspension of Standing Orders in its operation to the particular purpose for which suspension is sought. I do not think that it is within the compass of Standing Order 34 that suspension can do anything other than affect the proceedings at one meeting. Accordingly, the resolution purporting to effect a permanent suspension of Standing Orders, which was its effect, was incompetent and null and void.

Therefore, meetings must be held at the times prescribed by Standing Order 39 until that Standing Order is altered. However, I think that on a fair reading of the rules and of rule 16(f) means that Special General Committee Meetings need not be held at a time fixed by Standing Order 39. If that were not the case then Special General Meetings may not be able to be called at sufficiently short notice. It would also seem to me inherent in rule 22(a) that the General Committee has power to decide to hold a Special General Meeting so called at any time at which it decides in accordance with the rules to do so.

Standing Orders were not suspended at the meeting of the General Committee of 5 April 1997, and the rescission motions were not validly passed and were void and of no effect as being passed contrary to Standing Order 35. Accordingly, the resolutions passed on 30 January 1997 requiring a Special Delegate Meeting to be convened has not been rescinded.

I also wish to make it completely clear that General Meetings or Non-Special Meetings are required to be held at the times prescribed in Standing Order 39. The resolution of 9 December 1996 to the contrary was invalid and of no effect. I will formally declare so.

I now turn to the resolution requiring the calling of a Special Delegate Meeting (see rule 8). That resolution, as I find, was not validly rescinded because Standing Order 35 was not complied with, as I have found above. I will also order that the respondent organisation act in accordance with that resolution. I would otherwise dismiss the application.

I should add that I have construed each rule, including the Standing Orders, giving each word its natural meaning and in the context of all of the rules. The conclusion which I have reached as to the meaning of the rules does not result in any ambiguity or absurdity (see Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation 35 ALR 151 (HC)).

What is to be clearly understood is that valid and lawful decisions of the General Committee are binding on all officers, members and Branches, unless an appeal is submitted to a Delegate Meeting, or a general referendum under rule 18.

In reaching this decision, I have considered all of the evidence, all of the submissions and all of the relevant material.

Order accordingly

Appearances: Mr M R Thobaven on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin Reginald Thobaven
Applicant

and

The West Australian Locomotive Engine Drivers, Fireman's and Cleaner's Union of Workers
Respondent.

No 527 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

10 April 1997.

Order.

This matter having come on for hearing before me on the 7th day of April 1997, and having heard Mr M R Thobaven on his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having reserved my decision on the matter, and reasons for decision being delivered on the 10th day of April 1997, it is this day, the 10th day of April 1997, ordered and declared as follows—

(1) THAT the resolution passed by the General Committee of the respondent organisation on the 9th day of December 1996 purporting to effect a permanent suspension of Standing Order 39 be and is hereby declared to be null and void.

(2) THAT the resolution passed by the General Committee of the respondent organisation on the 30th day of January 1997 requiring a Special Delegate Meeting to be convened has not been validly rescinded.

(3) THAT the resolution passed by the General Committee of the respondent organisation on the 5th day of April 1997 purporting to rescind such resolution of the 30th day of January 1997 be and is hereby declared null and void.

(4) THAT the respondent organisation act in accordance with the said resolution of the 30th day of January 1997 and convene a Special Delegate Meeting as such resolution directs.

(5) THAT the application herein otherwise be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

1 May 1997.

Order.

This matter having come on for hearing before me on the 30th day of April 1997, and having heard Mr P W Veenstra on his own behalf as applicant, Mr D K Hathaway on behalf of the respondent organisation, and Mr M R Thobaven on his own behalf and on behalf of D F Robinson, J P Menegon, Antonio Paul Carosella, Harold James Wyatt, Lindsay Terrance Bennewith, Darren J Macauley, Andrew Paul Shaw, Vincenzo Ameduri, John William Harken, Allan B Ashcroft, Peter White, Kalman Balazs George Takach De Duka, Paul James Trewin, Brian Frederick Henderson, Anthony Francis Brandt, John Robert Cracknell, Kevin Warren Jarrett, Colin Turner and Christopher Robert Stuart as interveners pursuant to s.27(1)(k) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to waive the requirements of s.35 of the Act, and the applicant having sought leave to withdraw the application, and I having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Act, that I refrain from further hearing and determining the matter, it is this day, the 1st day of May 1997, ordered and declared that I refrain from further hearing and determining application No 560 of 1997 having given leave to the applicant herein to withdraw the said application.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

1 May 1997.

Reasons for Decision.

THE PRESIDENT: (Given extemporaneously at the hearing of this matter on 8 April 1997 and edited by me).

I am satisfied that there is sufficient interest within s.27(1)(k) of the Industrial Relations Act 1979 (as amended) to allow these persons as members to intervene because they are members of the respondent, and having regard to the subject matter of this application. I am satisfied therefore that there is sufficient reason for them to be given leave to intervene in relation to the exercise of my jurisdiction and in relation to the substance of this application.

Appearances: Mr P W Veenstra on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

Mr M R Thobaven on his own behalf and on behalf of D F Robinson, J P Menegon, Antonio Paul Carosella, Harold James Wyatt, Lindsay Terrance Bennewith, Darren J Macauley, Andrew Paul Shaw, Vincenzo Ameduri, John William Harken, Allan B Ashcroft, Peter White, Kalman Balazs George Takach De Duka, Paul James Trewin, Brian Frederick Henderson, Anthony Francis Brandt, John Robert Cracknell, Kevin Warren Jarrett, Colin Turner and Christopher Robert Stuart as interveners.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

8 April 1997.

Order.

This matter having come on for hearing before me on the 8th day of April 1997, and having heard Mr P W Veenstra on his own behalf as applicant, Mr D K Hathaway on behalf of the respondent organisation, and Mr M R Thobaven seeking leave to intervene on his own behalf and on behalf of D F Robinson, J P Menegon, Antonio Paul Carosella, Harold James Wyatt, Lindsay Terrance Bennewith, Darren J Macauley, Andrew Paul Shaw, Vincenzo Ameduri, John William Harken, Allan B Ashcroft, Peter White, Kalman Balazs George Takach De Duka, Paul James Trewin, Brian Frederick Henderson, Anthony Francis Brandt, John Robert Cracknell, Kevin Warren Jarrett, Colin Turner and Christopher Robert Stuart pursuant to s.27(1)(k) of the Industrial Relations Act 1979 (as amended) ("the Act"), and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and having given reasons for decision, it is this day, the 8th day of April 1997, ordered and directed as follows—

(1) THAT the President is satisfied that the said abovenamed persons have sufficient interest to be heard in relation to application No 560 of 1997 herein pursuant to s.27(1)(k) of the Act.

(2) THAT application No 560 of 1997 be and is hereby adjourned for hearing and determination to 10.00 am on Wednesday, the 30th day of April 1997.

(3) THAT interim order (2) made on the 1st day of April 1997 be and is hereby extended in its operation to Wednesday, the 30th day of April 1997, or until further order.

(4) THAT such order may be sought to be renewed by oral or written application.

(5) THAT a copy of this order shall be served at the next General Committee Meeting upon all members present and within 48 hours of the 8th day of April 1997 on all those not present at such General Committee Meeting.

(6) THAT leave be and is hereby extended to the applicant and respondent organisation herein to file and serve upon the interveners herein within three days of the 8th day of April 1997 written request of the particulars of the application by the said interveners.

(7) THAT the interveners herein do reply in writing to the applicant and respondent organisation herein setting out full particulars of the grounds of intervention and also filing the same within four days thereafter.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

3 April 1997.

Reasons for Decision.

THE PRESIDENT: This is an application made pursuant to s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") by which the applicant seeks interim and final orders to alter rule 13 of the rules of the respondent organisation so that the quorum required for meetings of the respondent's General Committee is reduced from nine to six.

Rule 13 of the rules of the respondent organisation, in its relevant part, reads—

> "Not less than nine members shall form a quorum at all meetings of the General Committee."

The applicant is a member of the respondent organisation, which is an organisation as that is defined in s.7 of the Act. There is therefore jurisdiction in the Commission as constituted by the President on this occasion to hear and determine the application.

The respondent organisation did not oppose the application.

Evidence was given from the bar table and was not in dispute. I was therefore able to accept that evidence (see R v Commonwealth Conciliation and Arbitration Commission and Others; ex parte Melbourne and Metropolitan Tramways Board [1965] 113 CLR 228 (HC)).

I can briefly state the facts. For some time the respondent organisation has suffered from disputation, within, in particular, the General Committee, which is the respondent organisation's governing body, between meetings of its supreme governing body, the Triennial Delegate meeting (and other meetings of delegates) (see rules 6, 7, 8 and 22).

For all of this year, almost no business has been able to be transacted because of this disputation (see exhibit 4). That is

because the General Committee has not been able to meet or, more often, has not been able to meet with the required quorum of nine persons present. In part, this has arisen because the General President and some members wish to meet, and regard themselves as bound to meet in accordance with Standing Order 39 which is part of the respondent organisation's rules. The General Committee, however, resolved last year to meet on alternative Tuesdays at 11.30 am, and some members purport to attend in compliance with that resolution. That resolution is at least, at first blush, invalid (see Thobaven v WALEDF&CU (application No 527 of 1997) (unreported) decision delivered 25 March 1997).

As a result of what I have described, however, no quorum has been present on many occasions and no business has been transacted. Agendas of General Committee business since December 1996 have not been dealt with because the General Committee quorum of nine of 12 members is not present due to consistent absences of some members of the General Committee.

There is a great deal of business, including questions relating to claims by the Public Transport Union for coverage of some of the respondent organisation's membership, industrial matters, the appointment of an Acting General Secretary, the proposed alteration of some rules and other business, untransacted by the General Committee.

The Executive Committee has met on a number of occasions, but I was not told what it has decided. Its powers, in any event, are limited under rule 21, which reads as follows—

"21. EXECUTIVE COMMITTEE

(1) The General Officers of the Union for the time being shall be constituted an Executive Committee with power to deal with any cases of emergency which may arise, pending the holding of a General Committee meeting, but the decision of the Executive Committee shall in all cases be subject to confirmation by the General Committee.

(2) In cases of extreme emergency the Executive Committee of the Union may suspend any officer or member temporarily, pending the decision of the General Committee."

In particular, under rule 21, the Executive Committee may only deal with any cases of emergency which may arise pending the holding of a General Committee meeting, and its decisions, in any event, must be subject to confirmation by the General Committee.

I infer that the General Committee was not able to consider what ought to be done in relation to this application. I was not told whether the Executive Committee had decided anything in relation to this application and whether it had given any instructions to the President as a matter of emergency. It seems to me that there may not have been any bar to it so doing.

Most or all of the members of the General Committee, as it seems, have been advised informally of the existence of this application.

Whether an interim order ought to be made depends upon a consideration of these facts and of the principles which are referred to in Corse v Robinson and CSA 77 WAIG 321 at 322.

There is, on the evidence available, no democratic control of the respondent organisation in accordance with its rules, by the General Committee because absences prevent a quorum being achieved and have done so for at least three months. Thus, an order which enables the General Committee to meet and transact its business (which is what the rules intend) would, as an interim measure, be in accordance with s.6(f) of the Act and would be beneficial to the respondent organisation and its members (see s.26(1)(c) of the Act).

Furthermore, it is detrimental to the respondent organisation and its members if the General Committee is prevented by the consistent absence of some of its members, occasioning the absence of a quorum, from transacting the business of the respondent organisation, which after all exists for the benefit of its members.

There is a substantial case to be tried as to whether a final order similar to that sought should be made.

There is no discernible detriment to the respondent organisation in the making of such an order. If I make an interim order so that the General Committee can meet and transact business with a reduced quorum, it will counter-balance the effect of consistent absences preventing the achievement of a quorum. Further, if such order exists only for the period up until the date when this application is listed for final hearing and determination, which is only a week away, then there can be no undesirable irreversible consequences, even if there are any irreversible consequences, at all.

The applicant has established that, in accordance with s.26(1)(a) of the Act, the equity, good conscience and substantial merits of the case, upon this interim application, lie with him.

I am not persuaded on the submissions made to me that the President has any power to alter rules, as the application seeks. It would seem to me more likely that rules can only be altered in accordance with s.55 and s.62(3) of the Act.

However, I do have power to direct that meetings until 8 April 1997 be conducted with a quorum of six and not of nine. I do so so that absenteeism will not prevent the proper government of the respondent organisation through and by the General Committee until this application is heard and determined. My power to do so lies in s.66(2) and s.66(4) of the Act.

So that members of the General Committee are properly and formally advised of what is occurring, I have ordered that the applicant serve copies of my order on all members of the General Committee.

I should add that the findings and conclusions which I have made or reached in relation to this application are restricted to this application only and cannot refer to the final hearing and determination of the application.

Appearances: Mr P W Veenstra on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

1 April 1997.

Directions and Interim Order.

This matter having come on for a directions and interim orders hearing before me on the 1st day of April 1997, and having heard Mr P W Veenstra on his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having determined that my reasons for decision will issue at a future date, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), it is this day, the 1st day of April 1997, ordered and directed as follows—

(1) THAT the hearing and determination of application No 560 of 1997 be and is hereby adjourned to 10.00 am on Tuesday, the 8th day of April 1997.

(2) THAT until the 8th day of April 1997 at all meetings of the General Committee of the respondent organisation, the presence of not less than six members of the General Committee shall constitute a quorum.

(3) THAT such order may be sought to be renewed by oral or written application.

(4) THAT a copy of this order shall be served at the next General Committee Meeting upon all members

present and within 48 hours of the 1st day of April 1997, on all those not present at such General Committee Meeting.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
Applicant

and

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

No 560 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

1 April 1997.

Order.

This matter having come on for a directions and interim orders hearing before me on the 1st day of April 1997, and having heard Mr P W Veenstra on his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, it is this day, the 1st day of April 1997, ordered and directed as follows—

(1) THAT leave be and is hereby granted to the applicant herein to amend the application herein by substituting for Schedule 'A' to the said application, the documents headed "Minute of Proposed Interim Order" and "Minute of Proposed Final Order" and filed herein.

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

AWARDS/AGREEMENTS—Application for—

ACI GLASS PACKAGING—PERTH MAINTENANCE TRADES (ENTERPRISE BARGAINING) AGREEMENT 1996
No. AG 78 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ACI Glass Packaging—Perth

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch & Other.

No. AG 78 of 1997.

ACI Glass Packaging—Perth Maintenance Trades (Enterprise Bargaining) Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

17 April 1997.

Order.

HAVING heard Mr M. Borlase and Mr I. McCarthy on behalf of the Applicant and Mr G.C. Sturman and Mr R. Larwood of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and Mr C. Young of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 24th day of March, 1997 entitled ACI Glass Packaging—Perth Maintenance Trades (Enterprise Bargaining) Agreement 1996 and subsequently amended on or about 17th April 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 ACI Glass Packaging—Perth, Maintenance Trades (Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. State Wage Principles
4. Application of Agreement
5. Parties Bound
6. Date and Period of Operation and Review
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Background
10. Wage Increases
11. Long Service Leave
12. Trade Union Training Leave
13. Accident Insurance
14. Continued Training of Apprentices
15. Agreed Measures to Achieve Gains in Productivity, Efficiency and Flexibility
16. Contractors, Casual or Temporary Labour
17. Previous Agreements
18. Avoidance of Industrial Disputes

SIGNATORIES

APPENDIX "A"—CONSULTATIVE & TRAINING COMMITTEE CHARTER

APPENDIX "B"—THE PROCESS OF CONSULTATION

3.—STATE WAGE PRINCIPLES

1) It is a condition of this Agreement that there shall be no extra claims made, award or over award, for the life of this Agreement except when consistent with a national wage decision which is ultimately endorsed by the W.A. Industrial Relations Commission.

2) The parties to the Agreement shall be bound by the terms of the Agreement for its duration.

3) The parties to the Agreement shall oppose any applications by other parties to be joined to this Enterprise Agreement.

4) The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

5) No provisions in this Agreement shall operate to cause any employee a reduction in ordinary time earnings, or to cause a departure from the standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

4.—APPLICATION OF AGREEMENT

1) This Agreement shall apply at the establishment of ACI Glass Packaging—Perth, and the incidence of this Agreement shall be as prescribed by Clause 5.—Parties Bound.

2) There are 29 employees employed by the Company who are members of or eligible to be members of the organisation referred to in clause 5 (1) and (2) hereof, are covered by the terms and conditions.

5.—PARTIES BOUND

This Agreement shall be binding upon—

1) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australia Branch.

2) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australia.

3) ACI Glass Packaging—Perth—35 Baile Road, Canning Vale, Western Australia 6155 (The Company).

6.—DATE AND PERIOD OF OPERATION AND REVIEW

1) This Agreement shall operate from the commencement of the first pay period beginning on or after the 31st October 1996 and shall remain in force until 30th June 1999.

2) Discussions relating to the renewal of this Agreement shall commence no later than six months prior to the expiry of this Agreement.

3) The parties will review achievements and progress of the implementation of this Agreement during the course of its operation.

7.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 No. 13 of 1965—Part 1.

Where there is an inconsistency between this Agreement and the Parent Award, this Agreement shall prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

The employees covered by this Agreement are engaged in maintenance work at this enterprise and the formation of this Agreement has been achieved through consultation and negotiations through the Consultative Committee structure.

9.—BACKGROUND

1) The parties to this Agreement referred to in Clause 5 hereof see this Enterprise Bargaining Agreement as an ongoing program of restructuring and consolidation of Structural Efficiency Principles, introduced as a result of the 1989 State Wage Case decision.

2) Fundamental to maintaining results already achieved and to further commit the parties to continuing the process of Structural Workplace Reform, the following agreed initiatives have been put in place—

a) A properly constituted Consultative and Training Committee has been established to implement and monitor both on-the-job and accredited training and to develop skill based career paths for all employees of ACI Glass Packaging—Perth, covered by this Agreement.

b) An ongoing career structure that will develop and provide employees with an understanding of productivity, efficiency and quality. Furthermore, encourage a team work environment that will allow employees to be part of and take responsibility in respect to the outcomes of the process.

c) Regular meetings of the Consultative Committee have resulted in information sharing and problem solving being instrumental to greater understanding and tolerance between the Company and its employees.

10.—WAGE INCREASES

1) Wages will be increased as follows—

Metal Trades (General) Award, Part 1.

Average 35 Hour Week		Column 1. Weekly		Column 2. Weekly		Column 3. Weekly		Column 4. Weekly	
Wage Group & Classification	Current Rate of Pay $	Wage Increase (4%)	New Rate	Wage Increase (2%)	New Rate	Wage Increase (5%)	New Rate	Wage Increase (5%)	New Rate
C8 Engineering Tradesperson Special Class Level 1	544.40	21.80	566.20	11.30	577.50	28.90	606.40	30.30	636.70
C6 Advanced Engineering Tradesperson Level 1	617.20	24.70	641.90	12.80	654.70	32.70	687.40	34.40	721.80
SERVICE INCREMENTS—									
6 MONTHS	10.40	.40	10.80	.20	11.00	.60	11.60	.60	12.20
12 MONTHS	11.30	.50	11.80	.20	12.00	.60	12.60	.60	13.20
18 MONTHS	11.70	.50	12.20	.20	12.40	.60	13.00	.70	13.70

2) The wage increases appearing in Sub Clause (1) hereof shall be payable as follows—

a) The increase in Column 1 shall be paid from the first pay period commencing on or after the 31st October 1996.

b) The increase in Column 2 shall be paid fifteen weeks after the date set out in (a) above, and payable from the first pay period commencing on or after the 13th February 1997.

c) The increase appearing in Column 3 will be paid on a date agreed by the parties to this Agreement. Provided that the specific measures detailed in Clause 12 of this Agreement are being implemented but in any event, the wage shall not be payable earlier than 31st October 1997.

d) The increase appearing in column 4 will be paid on the same basis as (c) above, except the increase will not be payable earlier than 1st August 1998.

e) The wage increases specified in Sub-Clause (1) of this Clause shall be payable in addition to the current agreed enterprise rates of pay and shall constitute part of the all purpose rate in respect of employees covered by this Agreement.

The wage increases will also apply to the Leading Hand, electronic funds and experience trade allowances which form part of the all purpose rate.

f) The wage increases referred to in Sub-Clause (1) of this Clause shall not be absorbed into any over award payment.

g) i) This Agreement will be reviewed (and varied where agreed) any time after May 1998 should there be a significant increase in the Consumer Price Index.

ii) In circumstances where an Agreement is reached to vary the terms of this Agreement in accordance with Sub-Clause (i), such variations shall operate prospectively.

iii) The Company agrees to maintain existing Award and Over Award Conditions except as provided otherwise by a ratified Agreement.

3) Gainsharing

It is agreed that the 2% wage instalment set out in Sub-Clause (2) (b) is in recognition of the parties developing gain sharing plans on the following basis—

Without prejudice to the Unions and their members' right to not participate in gainsharing in the event that acceptable plans are not developed, the parties agree to participate in the development of gainsharing plans at ACI's glass plants on the following basis—

i) The Company provides all relevant information required by the Unions and members at each stage of the process;

ii) There are developed agreed national guidelines for plant level plans;

iii) There are developed agreed plant specific gainsharing plans, subject to the national guidelines, suited to the circumstances at each plant.

iv) At the completion of each step, acceptance of proposals will be subject to endorsement by the membership.

Final implementation will be subject to membership endorsement and the development of the plans will be subject to the best endeavours of the Unions.

A 2% increase will apply to the relevant company rate operative 15 weeks, from the new EBA operative date 31st October 1996. This increase is to be offset against gainsharing outcomes over the life of the Agreement. If, however through no fault of the respective parties a gainsharing scheme either—

i) does not become operative; or

ii) does not produce an outcome equal to a 2% offset

the company in those circumstances will not seek recovery of such offset.

4) Payment of Wages by Electronic Funds Transfer

The Company will pay an additional one off $8.00 amount per annum paid direct into the hourly rate. This amount represents the difference between the National Framework amount of $28.00 and the $20.00 paid in our previous Agreement. This is in full settlement of any future claim in this matter.

11.—LONG SERVICE LEAVE

13 weeks after 10 years service with accumulation operating prospectively from the date of agreement 31st October 1996. Employees shall be entitled to be granted long service leave upon accumulating 13 weeks leave.

12.—TRADE UNION TRAINING LEAVE

Ten days paid leave per year per delegate cumulative up to 40 days. Pooling among delegates available. Company may support training for non-delegates subject to detail.

The Company will consider support for Trade Union Training Authority incorporated in discussions with National Officials of the Unions.

13.—ACCIDENT INSURANCE

i) Journey Accident Insurance

The current Worker's Compensation Legislation does not provide Journey Accident Cover, the Company will provide adequate Journey Accident Insurance cover in accordance with current BTR policy.

ii) Sickness & Accident Insurance

The parties agree to examine this issue during the life of the Agreement to determine if appropriate coverage is available on a cost neutral basis.

Employees shall have available to them a choice of Insurer.

14.—CONTINUED TRAINING OF APPRENTICES

ACI Glass Packaging is committed to continuing to train apprentices into the future. The Company will not avail itself of the opportunity under the model Apprenticeship and Trainees Scheme (MAATS) and the Workplace Relations Act to discontinue payment of apprentices for time spent in training; i.e. so-called "unproductive time".

15.—AGREED MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY EFFICIENCY AND FLEXIBILITY

1) Continuous Improvement

The parties to this Agreement recognise and accept the need for continuous improvement and change in the manufacturing process and methods in order to remain competitive.

The parties will discuss the overall strategic direction for ACI Glass Packaging—Perth.

Any changes that occur during the life of the Agreement will be discussed at a Consultative Committee level.

Implementation of the Three Year Manufacturing Plan for our Business Plan is critical for the ongoing operation of the business. The achievement of this Manufacturing Plan forms part of the objective of this Enterprise Agreement.

The parties note that the Three Year Manufacturing Plan is a living document that is modified and updated each year in response to changes in the market and business context of the Perth operation.

The parties are committed to the ongoing consultation surrounding the implementation of the Three Year Manufacturing Plan and K.P.I. initiatives. At this stage, major areas for consultation and implementation of Manufacturing Plan initiatives include, but are not limited to—

- Quality performance (eg eradication of critical defects, packed ware audits, reduced held ware, reduced customer complaints).
- Improved job change performance.
- Facility projects (eg total packaging centre).
- Overtime and manning levels.
- Improved safety performance.
- Improving plant housekeeping and hygiene.

2) Training

a) ACI Glass Packaging—Perth is committed to the development of a training program that will provide

both internal on-the-job training and externally provided training in order to fulfil the following requirements—

(i) Meet the current and planned human resources skill needs of the plant.

(ii) Be appropriate to the size, structure and nature of the operation of the plant.

(iii) Meet the need to develop vocational skills relevant to the plant through in-house training and through courses conducted by accredited educational institutions and providers.

(iv) The implementation of a plant training program is a key element in meeting the express commitments of the parties to the Agreement particularly with the continuing emphasis of the use of state of the art production technology and computerised systems.

(v) The parties to this Agreement are committed to the need for a more highly skilled and flexible workforce that provides employees with access to more varied, fulfilling and better paid jobs.

b) Nominated courses that are approved by the Training Committee—

(i) Where the Training Committee recommends that an individual should undertake additional training, that training shall be carried out without loss of ordinary time earnings (Monday—Friday).

(ii) It is currently agreed that all external training (off site) outside of normal ordinary hours is paid at single time (Monday—Friday).

(iii) The parties agree to review the current internal training payment (overtime) outside of normal ordinary hours. The committee will work towards resolving an alternative method to the current overtime payment, to be resolved in the first 6 months of the agreement being signed, by mutual agreement.

c) The following will apply to employees wishing to undertake Company sponsored training—

(i) employees must apply for the course via, a written application to the Training Committee;

(ii) if the course is available during the employee's normal work hours, then unless extenuating circumstances exist, the employee should attend the course during this time;

(iii) if it is mutually agreed between the Company and the employee, the employee's normal working hours may be varied within the normal spread of hours in order to include course lecture times during his/her normal hours;

(iv) if it is not possible to vary the employee's hours, then the employee who undertakes the course outside of normal working hours will be paid ordinary rates of pay for the actual time spent undertaking the course externally.

(v) employee's will only receive normal rates of pay for training. The Company will not pay shift or other penalties for courses undertaken outside of normal hours;

(vi) employee's who receive paid training leave will be required to submit to their Supervisor on the next working day following the course, written evidence from the relevant training institution confirming his/her attendance at the course;

(vii) any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the Company's technical library) incurred in connection with the undertaking of training will be reimbursed by the Company upon proof of satisfactory progress. The Training Committee will monitor satisfactory progression of each employee undertaking approved training;

(viii) travel costs (and accommodation if applicable) incurred by an employee undertaking approved training which exceed those normally incurred in travelling to and from work will be reimbursed by the Company.

3) Rostered Day Off (Day Workers)

There are certain work load periods that require people to work overtime on their Rostered Day Off (Friday) to cover the job changes across the plant.

Where an employee is required to work on their rostered day off the following shall apply—

i) Rostered day's off can only be changed by mutual agreement between the employer and employee.

ii) If employees work on their rostered day off

a) they shall be paid at overtime rates (minimum 4 hours) or alternatively,

b) the rostered day off may be altered and taken on a mutually agreed date within the fortnightly cycle.

iii) at least 48 hours notice of change of the rostered day off.

If this arrangement is considered to be being abused by the employer or employee, it will be reviewed by the consultative committee.

4) Flexibility

i) Hours of Work (Day Workers)

The current arrangement in place whereby the spread of ordinary hours is worked between the hours of 6.00am and 6.00pm covers the situation of start and finish times between these hours (Monday—Friday).

The current standard start and finish times are 7.15am—3.45pm.

To change the start and finish times would require 48 hours notice or a lesser period by agreement, also flexible reciprocation is expected. If an employee is unable to comply with the variation request, then this will be accepted.

ii) The following items were tabled by the Metal Trades employees in respect to practices that have been implemented to enhance the plant efficiency and achieve flexibility;

Changing work practices to meet customer and company requirements—

- Downsizing that occurred as a result of a machine line closure.
- Cold End maintenance transferred from Machine Maintenance to Plant Maintenance Department without additional manning.
- F.P. Machine, non reject cut off switch, trialed successfully. Retrofit on all F.P. Machines in due course.
- Training requirements during days off.
- Valve testing bench (system for vertiflow).
- Machine shop, micrometer measuring innovation developed and introduced.
- Jig trolley for repairing No. 13 shear mechanism.
- Shift relief personnel increased from 1 to 3 within existing numbers.
- Proximity switch on valspex sprays.
- Reject system on No. 11 down ware detector.
- Job changes, F.P. Machine head plate support bracket developed.
- Flexibility of morning rest period taken to accommodate work activity.
- Training of glassworker's on use of sandblaster and spraying gear—
  - ♣ not insisting that fitters only clear sandblaster when blocked.
  - ♣ liaising on shift with Shift Manager's when gear in short supply , re damage repair or mods.

- ♣ requesting priorities for cleaning, repair and supply of equipment on shift (all above involves leading hand role).
- Furnace hopper batch level detector proximity switch.
- Job changes, change to work practices.
- No. 13 machine feeder mechanism work station.
- Quantity of mould equipment greatly reduced to machine shop, as most jobs now being done by hand finishing in Mould Maintenance.
- No.11 Machine baffle mechanism guide pinch bolt modification.
- Ink Jet Printers.
- High speed profile turning of plunges.
- Exhaust silencer on blowhead.
- Attachment to shields gauge for accuracy in reading thickness of ware in two preset positions.
- Single bargaining unit.
- ISO 9002 be recognised as involvement by workforce.
- Leading hands increased work load.

5) Shift Rosters

In order to achieve an improved shift roster system which will enhance greater scope for efficiency and cost reduction, the parties to this agreement will review alternative roster systems with a view of implementing such changes, by mutual agreement.

Any change to shift rosters agreed from such review shall follow the normal plant consultative mechanisms prior to implementation.

6) Days In Lieu

At the present moment there is no structured process in place for the accumulation and the taking of days in lieu.

The parties agree to investigate alternative methods of accumulation and the timing of taking days in lieu, within the first 12 months of the agreement.

It is the intention of the parties to mutually resolve this matter to improve the current system of days in lieu.

7) Service Increment Payment and Allowances

(i) It is agreed that a process for reviewing the current service increment payments on site will be undertaken within the first 3 months of the agreement being signed.

The aim of this will be to reduce the complexity of the service increment payment and have it incorporated into the all purpose base rate.

(ii) The current electrical licence allowance paid to electrical tradepersons in accordance with the Metal Trades (General) Award, will be incorporated into the all purpose base rate. The qualification of movement of this payment into the all purpose rate is that it will only apply to the electrical tradeperson.

(iii) In order to recognise the functions that are considered to be performed in addition to the role of the Leading Hand in the Maintenance Departments, a review will be carried out within 6 months of signing the Agreement to establish the one Leading Hand allowance as follows—

a) Leading Hands currently working in this capacity in Mould, Machine & Plant Maintenance Departments.

b) Current Leading Hand allowance increased to level (iii) of the Metal Trades (General) Award Part 1 (currently $34.60 per week).

c) Leading Hand duties to be clarified.

d) Person/s currently in receipt of Leading Hand allowance as a result of redeployment or protection of rate will not be included in review.

The one Leading Hand rate to be effective from date of ratification.

8) 1996 E.B.A. Document

The parties to this Agreement will provide a finished and complete copy to all tradespersons upon final agreement being reached.

16.—CONTRACTORS, CASUAL OR TEMPORARY LABOUR

The Utilisation of Contractors, Casuals or Temporary Labour will be discussed with a member/s of the Consultative Committee on each occasion of a proposal to utilise a Contactor.

1) Details of the type of activity involved and number required will be advised prior to the commencement of such work taking place.

2) In the event of agreement not being reached in a particular situation, the parties agree to follow the process set out in Clause 17—Avoidance of Industrial Disputes.

Further discussion within 6 months of ratification of agreement.

17.—PREVIOUS AGREEMENTS

The wage increases and productivity improvements featured in the previous Plant Enterprise Agreements, shall continue to apply during the life of this Agreement, except where specifically modified by this current Agreement.

18.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement and employees covered by this Agreement shall observe the procedure set out under Clause 34. —Avoidance of Industrial Dispute in the Metal Trades (General) Award 1966 No.13 of 1965 reproduced below—

1) The objective 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 production and wages.

2) The following principles shall apply—

a) Depending on the issues involving, the size and function of the plant or section of the plant, 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 between 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 representatives;

(iv) discussions involving senior union officials (State Secretary) and the Senior Management Representatives(s);

(v) there shall be an opportunity for 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 earliest 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 limitations on the performance of work while the procedures or 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.

SIGNATORIES

For and on behalf of ACI Glass Packaging—Perth indecipherable (signed)

For and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Unions of Workers, Western Australia Branch. K. Peckham (signed)

For and on behalf of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australia. W. Game (signed) *COMMON SEAL*

Dated this 7th day of March 1997

APPENDIX A

A C I P E R T H

CONSULTATIVE

&

T R A I N I N G

C O M M I T T E E

C H A R T E R

ACI PERTH

CONSULTATIVE & TRAINING COMMITTEE

CHARTER

1 OBJECTIVES OF THE COMMITTEE

The Objectives of the Committee will be—

- Items to be discussed shall be agreed by consensus.

To consult and strive towards resolving issues raised at the consultative Committee Level by consensus.

To increase the Quality of the Working Life of Company employees, particularly in the area of job satisfaction, skills through training and job design.

To enhance job security and the competitiveness of the Company.

Provide a structured process for communication to the work force.

Negotiate an Enterprise Bargaining Agreement on behalf of the Employees and the Company.

To aim for continuous improvement in the quality of our Products, Customer Service, Productivity and Efficiency.

2 COMPOSITION

The Committee will consist of a maximum of 16 members. This will consist of a maximum of 5 representing Management, one of who will be the Plant Manager. There will be a maximum of 11 Employee representatives.

Changes to the number or composition of the Committee can only be made with the prior approval of the Committee.

Where required, additional Members can be temporarily invited to the Committee to represent specific areas on specific issues.

3 METHOD OF ELECTIONS

Management Committee members will be appointed by the Plant Manager.

Employee representatives will consist of no more than 5 representatives from Metal Trades and 6 representing Glass Workers/Other Areas.

Employee representatives will be elected in accordance with union policy and practice.

Members may resign from the Committee. In the event of persistent failure to observe duties. The Committee may take actions to secure their replacement.

4 DURATION OF OFFICE

One half of the Committee's representatives will be offered for re-election annually (February), to be determined.

5 ELECTION OF OFFICE BEARERS

Secretary: The Secretary will be appointed from the Committee and will be someone with the required skills.

Chairperson: To be elected by the Committee from within the Committee by consensus for a period of six months. The aim is to rotate the position. Sub-Committees will appoint their own office bearer according to need.

Minute Takers: Will be appointed at the start of each meeting.

6 MEETING PROCEDURES

a) The Committee will operate two permanent Sub-Committees—

Glass Worker Sub-Committees;

Metal Trades Sub-Committees;

Each Sub-Committee should agree, through consensus, on actions which affected their areas. Such decision/actions will be tabled at the full Committees next meeting.

Issues requiring resolution by the full Committee will be directed to this Committee in the first instance.

Other Sub-Committees may be formed according to need.

Proposed meeting cycle:

Full committee Meeting Week 1
Sub-Committee (Glass) Week 3
Sub-Committee (Metals) Week 5
Full Committee Meeting Week 7

i Recommended duration of Meetings maximum 2 hours.

ii Commitment to organise Meetings in accordance with the proposed meeting cycle.

iii Special meetings can be called when required by Chairperson at request by Committee Member/s.

iv Full Committee meetings and special meetings can be held providing that a minimum of three members are present from each of the relevant Sub-Committees, for a sub-Committee meeting 2 members from the relevant committee.

b Permanent Sub-Committees will be—

i Glass Worker representatives and Supervisors from relevant areas.

ii Maintenance representatives and Supervisors.

c Agenda Guidelines

i Reviewing of previous meeting minutes, reports and issues from Sub-Committees and new agenda items.

ii Chairperson to summarise individual Agenda items at the conclusion of each discussion.

iii Minutes and action plans relating to each item to be completed at this stage.

Same process to apply in Sub-Committee meetings.

iv Minutes of Full and Sub-Committee meetings to be posted no later than 2 working days after the meeting.

d Agenda Generation

New items to be submitted using agenda item format 3 days prior to meeting.

Agenda to be distributed 2 days prior to meeting.

7 POLICY ON TRAINING FOR COMMITTEE MEMBERS

Members can join before training.

Member will be exposed to formal training and times will be mutually agreed by Member and Committee.

8 POLICY ON EXTERNAL PARTIES/RESOURCE ORGANISATIONS

i The Committee has the right to request the attendance of external parties or resource organisations.

ii No external person/parties can attend Meetings without prior agreement of the Committee.

iii This agreement can be reached at the previous meeting, prior to the next meeting or at the commencement of the next meeting.

9 RELATIONSHIP OF THE COMMITTEE TO OTHER COMMITTEES

At the point where an issue becomes an industrial matter in dispute, the Committee will refer the issue to the appropriate Industrial Relations Committee. However, issues could return to the consultative Committee.

Matters the responsibility of the Occupational Health and Safety Committee will not generally be discussed.

10 METHOD OF ASSESSING & REVIEWING COMMITTEE PERFORMANCE

Regular assessing on a six monthly basis or as and when required should be applied, using guideline in the "Eight Steps" (The Process of Consultation—Appendix B,) or any other checklists agreed to be the Committee.

11 RIGHTS & DUTIES OF MEMBERS

The following shall apply;

- Provide the opportunity for all Committee Members and Workforce, without discrimination, to express their views and respect the same.

  Attend scheduled Meetings on times.

- Ensure precise communication on subject matters. Thus allowing correct feed back to the workforce.

  A commitment to attend scheduled meetings where possible.

  No Committee Member shall be subject to any financial disadvantage due to the undertaking of any committee responsibilities.

12 COMMUNICATION

Committee business to be communicated to all parties by—

Formal Briefing Cycle—Shift Meetings, Discussion Groups, if outside of normal hours to be paid at single time;

Informal Briefings by Members;

Publishing of Committee circulars summarising outcomes of meetings, when required.

(APPENDIX B)

THE DEFINITION OF CONSENSUS

THE PROCESS OF CONSULTATION

STEP 1 Get all the information available on the table.

STEP 2 Establish the initial extent of disagreement AND agreement.

STEP 3 Look for another way of expressing the problem—try to shift the perspective towards the collective need, or break the issue into its various parts and start with the initial issue rather than the overall problem.

STEP 4 Highlight and summarise the progress that has been made in the discussion to date at regular intervals.

STEP 5 Propose options for getting through the deadlock—encourage lateral thinking. Build upon the option proposed by others when making amendments or further suggestions.

STEP 6 Identify people's underlying need or concern when they are unhappy with the option being discussed. Practice the skills of active listening and use clarifying questions.

STEP 7 Propose modifications to the option which meets the identified needs of the person unhappy with the emerging consensus.

STEP 8 Summarise the final status. Recap the elements of the agreement and record.

ANI HOSKINS (A DIVISION OF ANI ENGINEERING) ENTERPRISE BARGAINING AGREEMENT 1996 No. AG 67 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

A.N.I. Hoskins.

No. AG 67 of 1997 and C 86 of 1997.

ANI Hoskins (A Division of ANI Engineering) Enterprise Bargaining Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

10 April 1997.

Order.

HAVING heard Mr Hicks on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr Borlase on behalf of A.N.I. Hoskins, the Commission hereby registers AG 67 of 1997 with effect from 24th March 1997 and pursuant to the Agreement and with the consent of the parties the Commission orders that for the purpose of payment of overtime that the status quo shall prevail pending negotiations, arbitration or interpretation. Arising from the negotiations and arbitration or interpretation of the provisions regulating the payment of overtime in the relevant award order or agreement, it is recognised that AG 67 of 1997 may be varied to clarify the basis of payment of overtime. Provided further that the parties may at any time seek to vary or cancel the provisions of this order as it relates to the arrangement for the payment of overtime.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

1.—TITLE

This Agreement shall be known as the ANI Hoskins (a Division of ANI Engineering) Enterprise Bargaining Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Statement of Principles
4. Incidence and Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Consultative Committee
8. Background
9. Continuous—Improvement Activities, commitment to International Best Practice
10. Accrued Leave
11. Hours of Work
12. Reclassification
13. Sick Pay
14. Occupational Health and Safety
15. Performance Indicators
16. Wages and Allowances
17. Prescription Safety Glasses
18. Clothing
19. Study Assistance
20. Flexibility
21. Company Tools
22. Grievance Procedures
23. Redundancy/Retrenchment Agreement

24. Commitments
25. Signatories

3.—STATEMENT OF PRINCIPLES

1. It is a condition of this industrial agreement that any variation to its terms on or from the 7th day of August 1996 including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the reasons for Decision in matters No 1164 of 1995 and No 915 of 1996.

4.—INCIDENCE AND PARTIES BOUND

1. This agreement shall apply to and be binding upon ANI Hoskins (a Division of ANI Engineering). The organisations of employees set out below, and all persons employed by ANI Hoskins (a Division of ANI Engineering)—average number of employees—60 in its operations at 170 Railway Parade, Bassendean, who are members or eligible to be members of the following union—

Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers, Western Australian Branch.

5.—DATE AND PERIOD OF OPERATION

1. This agreement shall operate from 1 December 1996 to 1 December 1998.

2. Both parties make a commitment to renegotiate this agreement from 1 June 1998.

6.—RELATIONSHIP TO PARENT AWARD

1. This agreement stands alone & replaces Agreement N? AG 45 of 1994, however this agreement recognises that the contents of agreement N? AG 45 of 1994 and AG 27 of 1992 are an ongoing commitment by all employees.

2. This agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award N?. 13 1965 and with the Steel Fabrication Industry Order N?. 1968 of 1990.

3. Where there is any inconsistency between this agreement and the parent award or the order this agreement shall prevail to the extent of the inconsistency.

4. This agreement also replaces the ANI Products (W.A. Service Division) Domestic Agreement dated 27 October 1992.

5. Both parties agree that this agreement combines all previous and existing agreements and initiatives except as stated in 1, 2 and 3.

7.—CONSULTATIVE COMMITTEE

1. The consultative committee covering ANI Hoskins operation at 170 Railway Parade, Bassendean, W.A. has been long established. It consists of Union shop stewards and their elected deputies and one representative elected by Union members, a maximum of four (4) of whom will attend any meeting plus management representatives to be an equivalent number or less.

In relation to the Enterprise Bargaining Agreement negotiations, the union representative from the consultative committee will nominate their representative for future negotiations.

2. Consultative meetings will work to an agenda which is agreed at or before the beginning of the meeting.

3. Agreed minutes will be produced of consultative meetings and displayed on workshop notice boards.

4. The committee will meet at a designated time each month. Where practicable, the meetings will be at 2.00 pm on the third Wednesday of each month.

5. The company agrees in principle with the need for the training of shop stewards who be allowed to attend trade union education courses which have received prior approval from the company.

6. Training in relevant courses will be given to all consultative committee members which has received prior approval from the company.

7. It is agreed by both parties that the consultative committee terms of reference need to be updated to comply with this agreement. This matter will be discussed at the first consultative committee after ratification of this agreement.

8.—BACKGROUND

1. The parties and employees to the agreement referred to in Clause 4.—incidence and Parties Bound hereof see this agreement as a continuing program of restructuring and consolidation of Structural Efficiency Principles introduced as a result of the 1987 State Wage Decision.

2. The parties and employees recognise that this agreement, along with amendments to the order and award and considerations which will come into place during the term of this agreement, shall lead to the fruition of the Structural Efficiency Principles introduced in 1987.

9.—CONTINUOUS IMPROVEMENT ACTIVITIES, COMMITMENT TO INTERNATIONAL BEST PRACTICE

The parties and employees are committed to the on-going process of continuous improvement and the maintenance of quality accreditation (AS 3902). During the term of this agreement the parties and employees agree to—

1. Continue a commitment to Structural Efficiency.
2. Continue a commitment to recognise and adopt best practices wherever practical.
3. Work towards attitudinal, cultural & productive gains.
4. Support the application for, and maintenance of ISO14001—Environmental Management System. The parties and employees support the application for accreditation in any standards which are relevant to the company's marketing strategy.
5. The parties and employees support the on-going effort to establish markets in S.E.Asia.
6. Continue to analyse & pursue the implementation of a staggered 6 or 7 day working week ie Saturday & Sunday could form part of a 38 hour week at standard hours. The Consultative Committee will consult with appropriate experts on different types of working arrangements. If the Consultative Committee arrives at a recommendation, the appropriate body would then negotiate.
7. The parties and employees support the effort to improve equipment for site work and to promote the company's image for site work— to be further discussed at consultative committee meetings.
8. A coding system is in place to highlight the priority of jobs. This enables shop floor employees to recognise the priority on work, and after discussion with supervision, adjust their hours to meet the need.
9. The company is committed to the training of apprentices. It is the companies intention that apprentices in the future will be drawn from MIGTA (Metropolitan Industries Group Training Association). Apprentices from MIGTA are bound by the employment conditions and wages as set down by MIGTA.
10. Typical of items which could be raised at consultative meetings are:—
    - contract labour
    - improvements to shop communication
    - training/career paths
    - general communication to the workforce
    - satellite stores
    - barriers to productivity from the 1994 agreement.
    - explore the possibility of individual time keeping/ absenteeism incentives.
    - tool box meetings
    - established throughout the workshop are:

      free tea, coffee and milk centres with fridge and ovens. These are there at the request of the workshop personnel. There is also a freezer containing meals for extended working hours. Personnel are to be encouraged by the parties to use the lunchrooms for their meal/tea or coffee breaks.

10.—ACCRUED LEAVE

1. There will be no restriction on taking of accrued leave which can be taken as and when required, provided the shop

superintendents agree to the requested dates after due consideration of production and work load requirements.

11.—HOURS OF WORK

1. Normal hours of work per week will be 38 hours—

Normal day work hours are 8 1/2 hours with 1/2 hour unpaid break Monday to Thursday and 6 hours on Friday and are worked between 6am and 6.00pm. Flexible arrangements between the hours of 6:00am to 6:00pm may be negotiated by mutual agreement. This arrangement may be to the benefit of either the employer or employees concerned, as long as the mutual agreement provision is maintained**.** This provision should take into account the need to meet production schedules or the requirement for the organisation of work at the same time as considering the convenience of the individual employee.

2. Where mutual agreement cannot be achieved, the hours of 7.00am to 3.30pm will apply. In this situation, any hours outside these hours will attract penalty rates .

3. Any hours worked outside normal hours described at 1 and 2 hereof are paid at penalty rates in accordance with the parent award and order. An employee who works overtime such that he is at work for a 12 hour period or more (eg. 7.00am to 7.00pm) shall have that days meal break included in his total hours for the day.

4. Morning tea breaks and lunch breaks will be taken at a time to fit in with production needs or to suit the comfort needs of the employee. This flexibility will not contradict the award with regard to lengths of time an employee will work without a break.

5. Both parties agree that because of the nature of the work 24 hour coverage and 7 days per week coverage will be worked whenever practical, this coverage will be provided by working extended and unusual hours or shift work.

6. Timekeeping

—2 minutes late will be counted as 8 hours worked.

—3 minutes late or more and the starting time is at the next quarter hour interval eg 7.15—7.30 etc.

7. Shift Work

Normal shift work hours are—

(I) Monday to Thursday day shift 7 am to 3 pm with paid 20 minute break. Afternoon shift 3 pm to 11 pm with paid 20 minute break. Night shift 11pm to 7am with paid 20 minute break.

(II) Friday day shift 7 am to 12.40 pm. Afternoon shift 12.40 pm to 6.20 pm. Night Shift from 6.20pm to midnight.

(III) Any time worked outside the normal shift hours will be at overtime rates.

(IV) The existing arrangement where a person transfers from Shift Work to Day Work, works Day Shift hours for a period after the transfer as detailed in (i) and (ii) above. This is to be changed to— The person coming from Shift Work to Day Work will work Day Shift hours up to a maximum of 5 shifts or the number of shifts they have worked on Shift Work, whichever is the lesser. The transfer to Day Work is effective from the time nominated at the time of notification.

(V) Twenty-four hour coverage on shifts can be achieved by working two 12 hour periods as agreed by both parties. If 24 hour shifts should become permanent then policy regarding 24 hour shift as laid down in the award apply.

(VI) Additional to the award the following payments are made (all purpose) for shift workers only.

Morning shift	13.16 cents per hour/ $5.00 per 38 hr/wk
Afternoon shift	15.0 cents per hour/ $5.70 per 38 hr/wk
Night shift	54.47 cents per hour/ $20.70 per 38 hr/wk

12.—RECLASSIFICATION

1. Reclassification is to be reopened and the existing data reworked by the consultative committee according to the implementation model spelt out in the Implementation Guide published by the National Metal & Engineering Training Board.

2. Reclassification will be on the agenda at the first consultative meeting after this agreement has been registered and will be handled by the consultative committee and ANI Engineering's Human Resource Manager or a person with similar qualifications. The parties are committed to re-classification. If contractual arrangements are acceptable by both parties then reclassification can take place at the earliest convenience.

13.—SICK PAY

1. The number of sick days which can be accumulated is unlimited.

2. If an employee has accrued a substantial entitlement to sick leave and/or a sincere attitude towards the use of such leave, the Company is willing to provide paid sick leave over and above the employee's entitlement in the case of serious and/or prolonged illness.

3. The extra remuneration would include full weekly pay for a standard 38 hour week at the employee's current normal hourly rate at the time of the illness. The employee would be paid for up to an additional two months over and above the employee's accrued sick leave entitlement at the time of the illness.

4. Each case is to be considered on an individual basis and a decision made by the consultative committee in liaison with the Engineering and Manufacturing Manager as to whether or not the case in question qualifies for the scheme.

14.—OCCUPATIONAL HEALTH AND SAFETY

1. All parties to this agreement recognise the importance of safety and health and the benefits of an accident-free workplace. The company, with the assistance of its employees and the union, will maintain a high standard and all will abide by the Western Australian Occupational Health and Safety and Health Act 1984 and Regulations 1996.

2. It is fundamental that business be conducted safely.

3. The company will meet its responsibility to provide safe working conditions, define and teach safe working practises, and provide information and control measures for hazards in the workplace and the environment.

4. It is a primary responsibility of all people employed by the company to ensure that their jobs are performed safely and without injury to themselves, their fellow workmates or the community.

15.—PERFORMANCE INDICATORS

1. Attendance and timekeeping incentives are to be discussed at consultative committee meetings.

16.—WAGES AND ALLOWANCES

1. In addition to the current allowances and the rates of pay that apply the following increase of 10% will be paid as outlined in the schedule below—

** Plus $9.70 tool allowance

	1 January 1997 $	1 Sept' 1997 $	1 Jun 1998 $
**B—Inspector	587.37	616.74	635.24
**C—Boilermaker	569.65	598.13	616.07
**D—Tradesman 1st Class Machinist 1st Class Welder Fitter Apprentices (% of)	564.50	592.73	610.51
E—Certified Rigger	531.56	558.14	574.88
H—2nd Class Welder Other Rigger	502.55	527.68	543.51
I—Storeman	493.44	518.11	533.65
K—2nd Class Welder	483.98	508.18	523.43
L—Trades Assistant	477.27	501.13	516.16
M—Process Worker Junior Employee (90% of)	474.38	498.10	513.04

2. Site allowance

On all sites as specified in the agreement (reference H924 September 1998) a site allowance, $1.39 (at December 1996)

per hour will be paid in lieu of dirt, height and heat money. This site allowance will be adjusted twice yearly by any CPI increase in January and July for the previous six months and notices published on notice boards of the new rate. On sites where an existing site allowance agreement applies, and the rate exceeds the CPI adjusted amount, the higher site allowance rate will be paid in lieu of the CPI adjusted amount.

3. Site overnight allowance

(I) From time to time employees may be required to work at sites, either in the Perth metropolitan area, outer metropolitan area or in country areas, either within WA or interstate.

(II) When an employee on site work is required to stay overnight at site for one or more nights, then an allowance of $ 30.00 per night will be paid for each night the employee is at site. This amount is to be included as a normal PAYE tax item.

(III) The allowance applies to Sunday night whether or not Sunday is a working day. This allowance is intended to cover out-of-pocket expenses such as private telephone calls, drinks, newspapers, etc.

(IV) This allowance will be revised every 6 months in January and July and will be adjusted in line with CPI increase for the previous six months and notices published (on notice boards) of the new rate.

(V) Additional provisions contained in the agreement Ref: H924 Sept. 1988 between unions and company will be included in the company induction handbook and revised to suit current conditions.

4. Welding Ability Allowances

—Gouging money	20 c per hour
—Innershield	15 c per hour
—T1 Steel Welding or Bisalloy	15 c per hour
—Auto Welding	15 c per hour
—CO Welding	15 c per hour
—Mig Welding	15 c per hour

When reclassification is agreed and accepted, the above allowances will be incorporated into classification rates as they are covered by NMETB Competencies.

5. Security Allowance

A flat rate of **$10.00** per week is paid to one employee only to ensure the premises are secure on completion of afternoon shift.

6. Service Pay

Service Pay will be incorporated into the hourly rate which will be paid to all permanent ANI Hoskins employees covered by this agreement and will replace the previous service payment arrangements. The payment will be **25 cents** per hour added to the rates.

17.—PRESCRIPTION SAFETY GLASSES

1. In the event that prescription safety spectacles are required, the company will cover the cost of prescription lenses which will be installed in company supplied safety frames which meet the appropriate Australian Standard. This standard calls for safety frames with permanently attached side shields. Lenses will be provided by company recommended optometrists and any costs over and above the standard recommended optometrist price will be met by the employee.

18.—CLOTHING

1. Jackets will be provided for winter months. Replacement jackets will be supplied on a fair wear and tear basis on return to the storeperson.

19. —STUDY ASSISTANCE

Where there is a benefit to both the employee and the company, an employee may apply through the Human Resource Department for approval of a study course or program. If the approval is granted, the employee will be reimbursed for the cost of books and associated fees upon successful completion of the course. This policy applies ANI Corporation wide.

20.—FLEXIBILITY

1. In the event of the relevant person not being available to carry out any specified task, then an alternative employee with relevant competencies may be used to carry out that task.

2. There will be no restriction or demarcation which would affect the productivity or efficiency of the Service Division. All employees will work to the full extent of their individual skills and competencies , and carry out incidental and peripheral tasks to complete the total job.

3. The parties and employees agree that where cross skilling and multi- skilling can be seen to improve production efficiency, then these methods will be adopted.

4. To compensate for fluctuating work loading or to meet production commitments, trades persons are not restricted to working within their trade areas. Machinists, Fitters and Welders may perform duties in any areas provided it is within their level of competency and skills.

5.Where there is a contractual requirement to have an administrative employee represent the Service Division when working at site, (engineer, foreman, sales engineer etc.)then that administrator may work as part of the site team to the extent that his assistance or expertise is needed.

6. Flexibility of personnel to be available for Friday afternoon work. Previously union guidelines for a 38 hour week prevented employees working after 1.00pm. on a Friday. The union guidelines were that there was to be no work after 1.00pm on a Friday apart from breakdown work and maintenance. This restriction has been waived for the term of this agreement.

21.—COMPANY TOOLS

1. Employees may have the free loan of company tools for home use as authorised by the shop superintendents. Any damage or breakage will be to the employee's expense.

22.—GRIEVANCE PROCEDURES ANI HOSKINS PROCEDURE FOR THE AVOIDANCE OF DISPUTES

The objective 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 of the performance of work and the consequential loss of production and wages. The procedure contains up to six stages for discussion of the issues. The six stages are paragraphs 1 to 6 as follows

1. Any question, dispute or difficulty (real or imaginary), shall in the first instance be raised by an employee or employees, with their immediate supervisor, except as in:

(I) If in the first instance the employee/s wishes to involve their shop steward, or have the shop steward act on their behalf, then that course of action is acceptable. Where agreement or satisfaction is not achieved then a failure to agree must be recorded before proceeding. N.B. It is recognised that a union member may approach a shop steward for advice or guidance, prior to the raising of an issue.

(II) Where an employee/s has raised an issue without the involvement of a shop steward, and a failure to agree has been recorded, then a representative or representatives of the employee/s and the shop steward, will meet with their immediate supervisor.

2. Where a failure to agree has been recorded at paragraph 1(I) or 1 (II) hereof then a representative or representatives of the employee/s and the shop steward will meet with the Workshop Superintendent of that department.

3. Where a failure to agree has been recorded at (2) hereof then the shop steward and the senior shop steward of the Company, will meet with the Workshop Superintendent of that department. N. B. if the shop steward is also the senior shop steward then he/she can nominate who would join him/her at this stage if needed. Where both the parties agree, a representative or representatives of the employee/s may be asked to participate.

4. Where a failure to agree has been recorded at (3) hereof then the shop steward and senior shop steward (or a nominated representative where the shop steward is the senior shop steward) will meet with the Workshop Superintendent and the Engineering and Manufacturing Manager.

5. Where a failure to agree is recorded at (4) hereof then the senior steward with a full time official of the union will meet with the Engineering and Manufacturing Manager and any other persons that both sides agree could be beneficial in the resolving of the dispute/issue.

6. Where a failure to agree is recorded at (5) then either party may raise the issue/dispute to a higher stage.

NB: "Immediate supervisor" is the first level of management above the position of leading hand.

7. Further to the above 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. Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded. Both parties agree that from (2) onwards a formal minute form will be used (sample attached).

9. 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.

10. Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties may jointly or individually refer the matter to the Western Australia Industrial Relations Commission for assistance in resolving the dispute.

11. While the procedures of negotiation and conciliation are being followed and in order to allow for the peaceful resolution of grievances, there shall be no stoppages of work, lockouts or any other bans or limitation on the performance of work.

12. 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.

13. It is accepted by both parties, that where a dispute can be resolved by informal means outside the strict lines of the procedure, then the disputes procedure should not be used to block, or delay, the settling of a dispute/issue.

14. Failure to agree should only be recorded at any stage of the procedure, when all means of settling at that stage have been exhausted.

15. Failure to agree can be recorded by either party.

16. Agreed cooling off periods can be used during the procedure at any stage, if both parties believe it will help defuse an issue or dispute.

23.—REDUNDANCY/RETRENCHMENT AGREEMENT

1.0 PREAMBLE

This agreement has been developed by the parties with a view to ensuring that the need to instigate redundancies will be greatly reduced. If , however, the need for redundancy arises, the agreement will provide a means of implementing a redundancy / retrenchment package in an orderly fashion.

2.0 APPLICATION AND SCOPE

Not withstanding the provisions of the Parent Award this agreement shall apply exclusively to the employees of ANI Hoskins who are members or eligible to be members of the union signatories hereto and whose employment is regulated by the abovenamed award.

Except where varied by this Agreement all other aspects of the termination/redundancy provisions of the Parent Award shall apply.

3.0 OPERATION AND DURATION

This agreement will form the basis for retrenchment at the company until renegotiated by the parties.

4.0 DEFINITION

(a) "Redundancy"—

(i) is a situation where there are more employees available than are needed to undertake the amount of work which needs to be done:

(ii) may be caused by (but not limited to) the following—

(aa) technological change eliminating the need for some jobs to be done by anyone;

(bb) changes in market demands creating a situation where less employees are required.

(b) "Retrenchment" is the action taken to reduce the number of employees to the level required by the company.

(c) "Week's Pay" means the ordinary weekly rate , including over—award payments and service grants.

5.0 NOTIFICATION

When it becomes evident that there is a downturn in work and a need for redundancy the company will notify employees, the consultative committee and the State Office of the Union who are parties to this agreement and consult on methods of minimising the effect of any possible redundancies that might occur.

Both parties agree that it is important that a maximum amount of notice is given and agree that as soon as it is identified that there is a possible redundancy situation, the above communication will take place.

Following discussions, if redundancies are unavoidable the Company will set a timetable to develop a final list of employees to be made redundant.

Employees will be asked to indicate their interest in volunteering to accept a redundancy package and this will be taken into consideration by the company in selecting retrenchees.

The selection of persons to be made redundant will be based on the following. This list is not exhaustive.

- skill level of the employee
- application of skills to task presently done by employee
- requirement of organisation for retention of skills
- receptiveness to be trained
- attendance (taking into account where absence has been by prior arrangement)
- disciplinary record
- safety application (including housekeeping)
- years of service

No discrimination will be made that conflicts with the provisions of the Discrimination Act.

A Company representative and a Union representative will review the selection criteria of all persons who are likely to be considered for redundancy. The two parties will ensure the accuracy of the list prior to any final decision being made by the Company.

The Company will use every endeavour to transfer employees to other positions where their skills can be effectively utilised.

Where an employee is moved to a position of different classification and / or trade not previously occupied by that employee, a trial period of one month will provide an opportunity for the Company and the employee to assess their long term suitability for the new position.

Where there is doubt about a person's suitability for a position, a review will be conducted regularly and that review discussed at the consultative committee.

In every event, where the employee/s and his/her representative feels that the process is being used in a way other than the intention of this agreement then he/she may take issue with the company on the matter.

If the determination is that the person is to leave the company during the trial period or at the completion of the trial period then the redundancy package will be available to the employee at the original rate of pay.

If moved to a new position, the person will be paid at the pay rate applicable to that new position immediately where the pay rate is more than the existing rate. Where the new rate is less, the person would not receive pay increases until such time as the pay rate catches up to the old rate.

6.0 SCHEDULE OF SERVICE PAYMENTS

SCHEDULE OF SERVICE PAYMENTS

Years of Service	Redundancy Payment	Long Service Leave
Under 1	0	0
1-2	4	0
2-3	6	0
3-4	7	0
4-5	8	0
5-6	10	Pro-rata
6-7	12	
7-8	13	
8-9	15	

Years of Service	Redundancy Payment	Long Service Leave
9-10	18	
10-11	19	
11-12	20	
12-13	21	
13-14	22	
14-15	23.5	
15-16	25	
Thereafter	26	

NB: Current employees with 13 years and over service will remain on last on first off protection basis. This scheme will cease once those employees have retired or left the employ of the company.

Employees who are 45 years and over in age will get one extra week's payment in addition to the above schedule.

7.0 PAYMENTS

A. All payments referred to are based on the employee's normal pay rate.

B. An itemised statement of entitlements will be given to an employee when they are notified.

8.0 LONG SERVICE LEAVE

Pro-rata long service leave will be paid to retrenched employees with 5 years or over service.

9.0 SICK LEAVE

On retrenchment all retrenched employees will be paid 100% of their accrued sick leave on termination.

10.0 CERTIFICATE OF SERVICE

The Company will provide a certificate of service where requested.

11.0 FINAL SETTLEMENT

It is mutually agreed that during the operation of this agreement there will be no extra claims made or considered within the scope or outside the scope of this agreement by either party relative to redundancy/ retrenchment.

12.0 SUPERANNUATION

Any superannuation benefits defined by the trust and deed rules will be paid in addition to redundancy pay.

13.0 DEATH OF AN EMPLOYEE

If an employee has been given notice of retrenchment and dies before the date that he or she actually leaves the employment of the company, all benefits which would have been payable under this agreement to that employee shall be paid directly to his or her estate unless the employee shall have otherwise directed the company in writing prior to his or her death.

14.0 EMPLOYEES AT RETIREMENT AGE

An employee is not entitled to severance pay beyond the amount of wages they would have received had they remained in employment until the age of retirement. The age of retirement is determined as the point at which company and employee contribution to the superannuation fund ceases or where the employee has nominated a date of retirement.

15.0 COUNSELLING/ASSISTANCE PROGRAM

The company has an employee assistance program in place. In the event of redundancy the company will let it be known to those employees who are to be redundant details of the employee assistance program, ie. through superannuation, out placement services registered financial counsellors and so on.

The company agrees to make enquiries from other engineering firms regarding possible work for retrenched employees.

24.—COMMITMENTS

1. The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

2. This Agreement shall not operate to cause any employee to suffer a reduction in ordinary time earnings, or to depart from the standards of the Western Australian Industrial Relations commission in regard to hours of work, annual leave with pay or long service leave with pay.

3. The parties expressly accept that they are bound by the terms of this agreement throughout its duration and will oppose any applications by other parties to be joined to it.

4. There shall be no further wage increases for the life of this agreement.

25. —SIGNATORIES

For and on behalf of Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

J. Sharp-Collett

Common Seal

For and on behalf of ANI Hoskins

Signed

.....

DATED THIS 7th DAY OF MARCH 1997.

BAILLIES LANDSCAPING INDUSTRIAL AGREEMENT
No. AG 317 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ceru Pty Ltd trading as Baillies Landscaping.

No. AG 317 of 1996.

COMMISSIONER P E SCOTT.

11 April 1997.

Order.

WHEREAS this is an application to register an industrial agreement pursuant to section 41 of the Industrial Relations Act, 1979; and

WHEREAS a hearing was convened on the 12th day of December 1996; and

WHEREAS that hearing was adjourned upon the request of both parties; and

WHEREAS the Commission wrote to the Applicant requesting advice on the status of the application on the 3rd day of January and the 10th day of February 1997; and

WHEREAS on the 17th day of March 1997 the Commission advised the Applicant by way of letter that if no advice was received by the 4th day of April 1997 it would be assumed the matter would not be proceeding and the matter would be discontinued; and

WHEREAS no such advice was received;

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.

BAINS HARDING INDUSTRIES (MANUFACTURING DIVISION) ENTERPRISE BARGAINING AGREEMENT
No. AG 89 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

Bains Harding Pty Ltd.

No. AG 89 of 1997.

Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement.

1 May 1997.

Order.

HAVING heard Mr G.C. Sturman as agent for the Applicant and Ms C. Natta as agent for 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 2nd day of April, 1997 entitled Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement be registered as an industrial agreement.

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

———

Schedule

1.0.—TITLE

This Agreement shall be known as the "Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement".

2.0.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Insurance Cover
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Training
10. Productivity Improvement Programme
11. Probationary Period
12. Casual Employees
13. Sick Leave
14. Commitments
15. Hours of Work
16. Wages
17. Grievance Settlement Procedure
18. National Standards
19. Contractors

Signatories to Agreement

3.0.—AREA AND SCOPE

This Agreement shall apply to an estimated 20 employees engaged in classification specified in Clause 16—Wages hereof at the Osborne Park Fabrication Workshop of Bains Harding Industries Pty. Ltd.

4.0.—PARTIES BOUND

4.1. This Agreement shall apply to —

(a) Bains Harding Industries Pty. Ltd. Osborne Park Fabrication Workshop (the "Employer"); and

(b) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

4.2. The parties specified in Subclause 4.1. hereof agree that the intention of entering into this Agreement is to achieve real and demonstrative gains in productivity, efficiency and flexibility for the purpose of improving working conditions for all employees and the commercial position of the Company and its customers.

5.0.—DATE AND PERIOD OF OPERATION

5.1. This Agreement shall operate for a period of 24 months from the date of signing by all parties and will continue after this time until renewed or replaced or cancelled. Pay increases related to the first agreed increase will be back paid to 6 January 1997.

5.2. The parties shall endeavour to commence negotiations for replacement, renewal or cancellation of the Agreement no earlier than three months prior to its expiry date.

5.3. The Company agrees that an additional 14% in wages will be paid over a two year period.

5.4. The additional 14% will be paid in three instalments as follows —

(a) 5.0% payable on and from the first full pay period following date of signing of the Agreement by all parties;

(b) 4.5% payable on and from 10 months from date of signing of the Agreement by all parties;

(c) 4.5% payable on and from 18 months from date of signing of the Agreement by all parties.

6.0.—INSURANCE COVER

Employees will have personal accident insurance journey cover to and from their place of work from date of signing of the Agreement by all parties this cover shall be no less than provided to employees in other operations of the company in W.A.

7.0.—RELATIONSHIP TO PARENT AWARDS

7.1. This Agreement shall be read and interpreted wholly in conjunction with part I of the Metal Trades (General) Award 1966 No. 13 of 1965 and the Sheet Metal Workers' Award No. 10 of 1973.

7.2. Where there is any inconsistency between this Agreement and the parent Awards, the Agreement shall prevail to the extent of such inconsistency.

8.0.—SINGLE BARGAINING UNIT

8.1. For the purposes of this Agreement a single bargaining unit shall be established by way of a Consultative Committee comprised of —

(a) two Company representatives; and

(b) two representatives from the workforce.

8.2. The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation of the continuous improvement programme.

9.0.—TRAINING

The Company will develop a training programme in conjunction with the consultative committee to meet the skills requirements of the work place and advancement of personnel within the Workshop Workforce.

10.0.—PRODUCTIVITY IMPROVEMENT PROGRAMME

10.1. The following measures will achieve real and demonstrable gains in productivity, efficiency and flexibility have been, or will be, implemented.

10.2. Consultation and Communication

Two-way communication between management and employees will be maintained and enhanced through the following —

(a) Regular management report-back meetings with all employees;

(b) Monthly Consultative Committee meetings for three months after signing of the Agreement and whenever required thereafter;

(c) Tool box meetings held as required to discuss scheduling and accident prevention programmes

10.3. Employee Involvement

Employees are to become involved and to continue focusing on—

(a) Customer service, both internal and external;

(b) Reduction in down time, waste and replacement parts;

(c) Productivity projects to improve quality and output without increasing overall costs.

10.4. Improvement Measures

In order to achieve the main aims of improved efficiency, productivity and flexibility, the following measures shall be implemented and the Consultative Committee will develop a system to monitor and report progress in relation to the objectives—

a. *Occupational Health and Safety*

Improved safety procedures and monitoring of methods to reduce the duration of time lost through injury.

b. *Reductions in Sick Leave and Absenteeism*

i. The parties aim to reduce the number of absent/sick leave days taken, achievable through monitoring in an effort to improve performance in this area.

ii. The aim of this Agreement is to reduce sick leave to 50% of the Award entitlement.

c. *Staff Assistance to Wages Employees*

Staff may use tools provided this does not in any way replace the jobs of employees covered by this Agreement.

d. *Consumables*

i. A concerted effort will be made by all employees to reduce wastage in consumable items such as gloves, glasses, grinding discs etc.

ii. The Consultative Committee will develop a system to monitor and report progress in relation to this objective.

e. *Flexibility of Rostered Day Off*

For the purposes of this Agreement a rostered day off (RDO) will mean a recreational day off. RDO's may be taken on any day of the week without loss of ordinary time earnings with mutual agreement between the employee and the employee's immediate supervisor and depending on workload. Individual employee's by agreement with employer may accumulate RDO's/RDO's which are accumulated may be taken as time off without loss of ordinary time earnings at a time agreed between the employee and employer.

An annual review of outstanding RDO's will be carried out to monitor any outstanding accrued RDO's.

f. *Completion of Jobs*

For the purposes of meeting client delivery deadlines, employees will complete work in hand each day by working reasonable overtime.

g. *Overtime Refusal*

As stated in the Award, employees shall not refuse to work reasonable overtime when requested so to do by the Supervisor. Reasonable overtime is regarded as 6 hours per week spread over not less than 5 days provided the employee is given not less than 1 day's notice. By agreement between the employee and employer a shorter notice period may be given.

h. *Hours Of Work*

When overtime is being worked, employees will consolidate an afternoon smoko time with a meal break.

i. *Overtime Rate*

All hours worked in addition to the ordinary hours for the week will be paid at the rate of 1.7 times the ordinary hourly rate. Except where the hours worked in any week that are in excess of 60 hours in that week shall be paid for at a rate of double the ordinary hourly rate.

j. *Time Keeping*

to promote prompt and efficient time keeping, employees will monitor their own starting, smoko and finishing times.

11.0.—PROBATIONARY PERIOD

As part of an on-going selection process, all new employees will be employed for a one month probationary period during which time the employee or the employer may terminate the contract of employment by giving one hour's notice and an employee so terminated shall be deemed to have been employed on a casual basis.

12.0.—CASUAL EMPLOYEES

12.1. a. In the case of a casual employee, the period of notice of termination shall be one hour.

b. If the required notice of termination is not given, one hour's wages shall be paid by the employer or forfeited by the employee.

12.2. For the purpose of this Agreement an employee shall be deemed to be casual—

a. if the expected duration of the employment is less than three months; or

b. if the notification referred to in Subclause (6) of Clause 6—Contract of Service in the Metal Trades (General) Award No. 13 of 1965 is not given and the employee is dismissed, through no fault of the employee, within three months of commencing employment;

c. if the employee is employed for a specific seasonal demand provided that the season does not exceed six months.

12.3. After continuous employment of three months with Bains Harding Industries, a casual who is not employed for a specific seasonal demand shall become a permanent employee. Accruals for annual leave etc. will commence from the date the employee's employment becomes permanent.

13.0.—SICK LEAVE

Notwithstanding the provisions of Clause 24—Absence Through Sickness in the Metal Trades (General) Award, it is a condition of employment an employee shall not be entitled to payment for sick leave unless, other than in extraordinary circumstances, the absence is reported to management prior to 8.00 AM on the day in question.

14.0.—COMMITMENTS

14.1. The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

14.2. Parties to this Agreement shall oppose any application by others to be joined to this Agreement.

14.3. There shall not be any further wage increases for the life of this Agreement except where consistent with State Wage Case decisions.

15.0.—HOURS OF WORK

15.1. Ordinary Hours of Work/General Flexibility Provisions

The ordinary hours of work shall be 38 per week, worked in accordance with this clause.

a. Ordinary working hours may be averaged out over a cycle longer or shorter than one week.

b. By agreement between the employer and an individual employee or group of employees the ordinary hours may be worked on any days of the week, Monday to Friday inclusive.

c. For all employees, ordinary daily hours, except when on shift work, shall be worked between 6.00 AM and 6.00 PM, or some other spread of hours as mutually agreed between management and employees, but shall not exceed 10 hours on any day and be consecutive, except for a meal break.

15.2. Alterations to Ordinary Working Hours

Any new arrangement of ordinary hours introduced during the life of this Agreement —

a. must be developed with consideration given to the issues specified below;

b. by agreement between the employer and an individual employee or group of employees the ordinary hours may be worked on any days of the week, Monday to Friday inclusive however flexibility to extend this provision must be agreed upon by the majority of employees affected by the change.

c. when changes to ordinary working hours are deemed necessary, consideration shall be given to the following issues—
   i. forecasted and actual customer demand
   ii. the most productive and efficient operation;
   iii. maximum utilisation of plant at the workplace
   iv. personal needs and family responsibilities
   v. fair application of flexible working arrangements for all employees
   vi. reasonable notice of any prospective change.

15.3. Rest Breaks

a. Employees shall not be required to work for more than six hours without an unpaid break of 30 minutes, except where an alternative arrangement has been agreed upon.

b. Each employee shall be allowed a paid rest break of 10 minutes, including wash-up time, to be taken at a time and in a manner determined by the section supervisor to ensure minimal disruption to operations.

16.0.—WAGES

Employees shall be paid as follows —

		Current		Increase On Signing Payable from 06.01.97		Increase Payable 01 October 1997		Increase Payable 01.06.1998	
Rate Set Code	Classification: Manufacturing	Hourly Rate $	Weekly Wage $	Increase 5%	Weekly Wage $	Increase 4.5%	Weekly Wage $	Increase 4.5%	Weekly Wage $
028	Lagger 2 (C13)	11.0500	419.90	11.60	440.90	12.10	459.79	12.60	478.69
013	Sheet Metal Worker 1A (C10)	13.8910	527.86	14.59	554.25	15.21	578.00	15.84	601.76
009	Sheet Metal Worker 1A (C10) LH	14.4810	550.28	15.21	577.79	15.86	602.55	16.51	627.32
012	Sheet Metal Worker 1B (C10)	13.6315	518.00	14.31	543.90	14.93	567.21	15.54	590.52
011	Sheet Metal Worker 1C (C10)	13.3050	505.59	13.97	530.87	14.57	553.62	15.17	576.37
058	Sheet Metal Worker 1D (C10)	12.8842	489.60	13.53	514.08	14.11	536.11	14.69	558.14
008	Sheet Metal Worker 1 (C12)	12.4210	472.00	13.04	495.60	13.60	516.84	14.16	538.08
029	Sheet Metal Worker 2 Lagger (C12)	11.7736	447.40	12.36	469.77	12.89	489.90	13.42	510.03
057	Workshop Foreman	15.6600	595.08	16.44	624.83	17.15	651.61	17.85	678.39

17.0.—GRIEVANCE SETTLEMENT PROCEDURE

17.1. Where a question, dispute or difficulty arises with respect to this Agreement, the matter shall initially be discussed between the employee concerned and his/her immediate supervisor. The employee may elect to have representation during the discussions.

17.2. Where the matter of concern remains unresolved, it shall then be referred to the Consultative Committee for discussion. The employee may elect for a Union Official to become involved. The parties shall initiate steps to resolve the grievance as soon as possible.

17.3. If the grievance cannot be resolved after following the procedures outlined herein, either party may refer the matter to the Western Australian Industrial Relations Commission.

17.4. The parties will continue working without involvement in any form of action such as bans limitation stoppages or lockouts while discussions are taking place to resolve any dispute.

18.0—NATIONAL STANDARDS

This agreement shall not operate so as to cause any employee to suffer a reduction in ordinary time earnings or Commission recognised National Standards such as hours of work, annual leave or long service leave.

19.0—CONTRACTORS

It is agreed that from time to time customers require work to be performed at short notice. In an effort to maintain customer credibility work that is not able to be scheduled into normal production, may be undertaken by contract personnel.

This clause regarding the use of contract personnel will be reviewed periodically so that the standards as set out in clause 18 hereof are maintained.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of Bains Harding Industries Pty. Ltd.	Signed for and on behalf of the Automotive Food Metals Engineering Printing and Kindred Industries Union Western Australia
A. Tough (Signed)	John Ferguson (Signed)
Date: 11.3.97	Date: 18.3.97

BEEHIVE MONTESSORI SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 1996.

No. AG 79 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Beehive Montessori School Inc.

No. AG 79 of 1997.

Beehive Montessori School (Enterprise Bargaining) Agreement 1996.

30 April 1997.

Order.

HAVING heard Ms T. Howe and Ms T. Anderson 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 Beehive Montessori School (Enterprise Bargaining) Agreement 1996 filed in the Commission on the 24th day of March 1997 and as subsequently amended by the parties on the 29th day of April 1997 be registered effective on and from the 29th day of April 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Beehive Montessori School (Enterprise Bargaining) Agreement 1996 and replaces the Beehive Montessori School (Enterprise Bargaining) Agreement 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Single Bargaining Unit
5. Scope of Agreement
6. Relationship to Parent Award
7. Date and Duration of Agreement

8. Expiration of Agreement
9. Objectives
10. Salary Rates
11. Other Agreed Matters
12. No Further Claims
13. No Reduction
14. No Precedent
15. Dispute Resolution Procedure
16. Signatories
Appendix I—Salary Rates
Appendix II—Funding Policy for Academic Achievement

3.—PARTIES TO THE AGREEMENT

This agreement is made between the Beehive Montessori School Inc. (the School) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SINGLE BARGAINING UNIT

The bodies party to this agreement have formed a single bargaining unit. The single bargaining unit has conducted negotiations with representatives of teachers and employers of the School and the ISSOA and full agreement has been reached as represented by this agreement.

5.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all teachers employed by the School who are employed within the scope of the Independent Schools' Teachers' Award 1976.

(2) The number of employees covered by this Agreement is 9.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the Independent Schools' Teachers' Award 1976 (the award).

Where there is any inconsistency between this agreement and the award this agreement will prevail to the extent of the inconsistency.

7.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on and from the 29th April 1997 and shall apply until the 31st December 1997.

The parties agree to meet no later than 6 months prior to the expiration of this agreement to review this agreement.

8.—EXPIRATION OF AGREEMENT

On the expiration of this agreement and in the absence of the registration of a subsequent Enterprise Bargaining Agreement, the provisions of this agreement shall apply until such time as a new agreement is registered and takes effect.

9.—OBJECTIVES

In reaching this agreement the parties have recognised—

(1) The need to maintain a fair and just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Montessori education.

(2) The need to safeguard and enhance the quality of teaching and learning within the School.

10.—SALARY RATES

Notwithstanding the provisions of Clause 11.—Salaries of the Award—

(1) The salary rates in the award are to be varied in accordance with Appendix I of this agreement, on the dates prescribed therein.

(2) By this agreement, and in accordance with Appendix I there will be a two tiered salary scale. On appointment, a teacher will be placed by the School on the appropriate scale according to the criteria contained in Appendix I.

(3) The 4.9% salary increase granted to teachers by the School from 1 July 1994 and the Montessori allowances of $2,625 per annum have been included in the salary rates prescribed in this agreement.

(4) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed in this agreement.

11.—OTHER AGREED MATTERS

(1) Duties Other Than Teaching (DOTT)

(a) Full time teachers are entitled to two hours of DOTT time per week.

(b) Part time teachers are entitled to DOTT time on a pro-rata basis.

(2) Relief Teachers

(a) A roster of relief teachers will be gathered and made available, including Special Education relief. Relief teachers will be called when a teacher is absent for more than one day.

(b) Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers employed for five days or less may be engaged by the day or half day and paid accordingly on a pro-rata rate. A half day shall be considered to be 3.5 hours or less in a particular school day.

(3) Additional Insurance Cover

In addition to the general insurance provided by the School, the School agrees to take out Professional Indemnity Insurance to cover the teaching staff.

(4) Long Service Leave

Notwithstanding the provisions of subclause (1) of Clause 10.—a teacher who has completed eight years' continuous service with the School shall be entitled to take ten weeks' long service leave on full pay, corresponding with a completed term.

(5) Employment of Teachers

Any teacher can apply for any available position within the School and be judged according to merit and by what is deemed in the best interests of the School.

Any permanent member of the teaching staff (other than a temporary or relief teacher) without Montessori training will agree at the time of contract to undertake Montessori training within three years unless otherwise negotiated in writing.

(6) Class Size and/or Special Needs Students

For classes containing special needs students consideration shall be given to reduced class sizes and/or additional teacher support.

(7) Professional Development

Professional development has as its priority the upgrading of professional skills and knowledge. The School and the staff shall share responsibility for ongoing professional development within the School taking into consideration the needs of the individual. Attendance at courses required by the School shall be done in school time whenever possible; however, activities of mutual benefit to the staff and the School should be accommodated on a shared-time basis.

(8) Academic Assistance

The parties agree to the policy statement Funding Policy for Academic Assistance as set out in Appendix II of this agreement.

12.—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.

13.—NO REDUCTION

Nothing contained herein shall allow the School to reduce the salaries or conditions of a teacher which prevailed prior to entering this agreement, except where provided by this agreement.

14.—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 agreements, whether they involve the School or not.

15.—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 to the agreement together with any additional representative as may be agreed by the parties.

(3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

16.—SIGNATORIES

Sue Lushey, Chairperson Teresa Anderson, Council Member
Beehive Montessori School Inc.

T.I. Howe
Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

APPENDIX I

SALARY RATES

	On & From 1 Jan 1996		On & From 1 Jan 1997	
	SCALE 1	SCALE 2	SCALE 1	SCALE 2
Step 1	23 469	26 146	23 938	26 669
Step 2	24 896	27 573	25 394	28 124
Step 3	26 321	28 998	26 847	29 578
Step 4	27 966	30 644	28 525	31 257
Step 5	29 502	32 180	30 092	32 824
Step 6	30 818	33 495	31 434	34 165
Step 7	32 135	34 811	32 778	35 507
Step 8	33 779	36 457	34 454	37 186
Step 9	35 589	38 265	36 301	39 426
Step 10	37 070	39 746	37 811	40 541
Step 11	38 080	41 063	38 842	41 884
Step 12	40 031	42 708	40 832	43 562
Step 13	41 318	44 352	42 144	45 493

Conditions Applicable to Salary Rates

1. Scale 1 shall apply to any teacher who

(a) does not have a Montessori qualification which is recognised by the School; or

(b) does not have in the opinion of the School adequate teaching experience in a Montessori School.

2. Once a teacher has obtained such a suitable qualification and/or undertaken adequate teaching experience in a Montessori School, the teacher will move across to Scale 2 at the same step already attained on Scale 1.

3. Scale 2 shall apply to any teacher who has a Montessori qualification which is recognised by the School and has, in the opinion of the School, adequate experience teaching in a Montessori School.

4. (a) The provisions of Clause 11 subclauses (1) & (2) of the Award shall apply in so far as placement on a salary step and movement from and between those steps is concerned, but shall not apply to the placement of a teacher on a scale.

(b) Notwithstanding Clause 4 (a) above, the provisions of Clause 11 subclause 2(f) and 2(h) of the Award will not apply where the additional qualification or second or higher degree is used to move a teacher from Scale 1 to Scale 2.

5. In assessing Montessori qualifications and the adequacy of teaching experience, the School shall be guided by the advice of the Principal.

APPENDIX II

FUNDING POLICY FOR ACADEMIC ASSISTANCE

(1) Guidelines

1.1 Upon review and approval by the Staffing and Conditions Committee and the School Council, Beehive Montessori School may provide financial assistance for a staff member wishing to undertake an educational programme not normally funded by the school's annual budget for ongoing professional development.

1.2 Such a programme must be deemed by the Staffing and Conditions Committee and the School Council to be of significant value to the school's current and projected educational needs.

1.3 Financial assistance may take the form of a grant or a loan or a combination of both.

1.4 Prior to submitting a formal application, applicants will be required to discuss their proposal with the Principal in order to ensure the appropriateness of their request. Each applicant must then submit to the Staffing and Conditions Committee a properly documented application, which will include:

(i) the name, content and duration of the proposed programme, and the name of the relevant institution or organisation;

(ii) a statement of the relevance and importance of the proposed programme to the schools' current and projected educational needs;

(iii) an itemised account of the cost of the programme (fees, books etc.);

(iv) a statement of the amount being requested, and the specific purpose for which that amount is intended;

(v) a statement detailing the reason why funding is being requested.

1.5 The application of this policy is contingent on the financial ability of the school to provide this benefit.

(2) Determination of the type and amount of funding

2.1 In determining the amount to be funded, whether in the form of a grant, a loan, or a combination thereof, the chief criterion will be the relevance and importance of the proposal to the school's current and projected educational needs. In practice and as a general rule, this will mean that recognised Montessori courses or those with a substantial Montessori component will be funded more than non-Montessori courses or those which are not accredited by the school.

2.2 A grant may be made available only to staff members who have taught at the Beehive Montessori School for a minimum of two years' full time, or, in the case of a part time teacher, for the equivalent of two years' full time service. Grants will be given unconditionally.

2.3 The Beehive Montessori School may provide a grant of up to $1,000 for each year of full time teaching service to the school, to a maximum total of $10,000. In the case of a part time teacher the number of years of service will be calculated on a full time equivalent basis. For the calculation of any grant time of service can be counted only once.

2.4 A loan may be made available in any one or more of the following circumstances:

(a) when the applicant is ineligible for a grant because she/he has taught at the school for less than two years' full time, or, in the case of a part time teacher, for the equivalent of two years' full time service;

(b) as a supplement to a grant, when the amount requested by the applicant is in excess of any amount which may be available to her/him by way of grant;

(c) in exceptional circumstances of financial need on the part of the applicant.

2.5 The recipient of a loan, either on its own or as a supplement to a grant, will be required to sign a contract specifying the conditions of re-payment, to be negotiated between the applicant and the Staffing and Conditions Committee, and approved by the School Council. Conditions may vary according to financial circumstances of the applicant. Such conditions may include specification of the time allowed for repayment, re-payment in terms of teaching service rather than money, re-payment by salary deductions or (if relevant) by the withholding of the Montessori

allowance. Failure to comply with any of the agreed conditions will entail the immediate re-payment of any outstanding balance of the loan.

BHP BUILDING PRODUCTS—MYAREE PERFORMANCE RELATED PAYMENTS SCHEME AGREEMENT 1997
No. AG 84 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Steel (JLA) Pty Ltd T/A BHP Building Products

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. AG 84 of 1997.

1 May 1997.

Order.

HAVING heard Ms C. Natta as agent for the Applicant and Mr J. Fiala as agent for 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 26th day of March, 1997 entitled BHP Building Products—Myaree Performance Related Payments Scheme Agreement 1997 be registered as an industrial agreement and shall replace AG No. 3 of 1996.

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

Schedule.

1.—TITLE

This Agreement will be referred to as the BHP Building Products—Myaree Performance Related Payments Scheme Agreement 1997.

2.—ARRANGEMENT

Clause	Subject Matter
1	Title
2	Arrangement
3	Application of Agreement
4	Parties Bound
5	Date and Period of Operation
6	Relationship to Parent Award
7	Purpose of the Agreement
8	Improving Business Performance
9	Key Performance Indicators
10	Performance
11	Payment
12	No Extra Claims
13	Eligibility for Payment
14	Review
15	Dispute Settlement Procedure
16	Signatories to the Agreement
	Attachment 1
	Attachment 2

3.—APPLICATION OF THE AGREEMENT

(1) This Agreement will apply at the BHP Steel (JLA) Pty Ltd establishment at Myaree in respect of employees bound by the terms of the John Lysaght (Australia) Limited Award (No. 27 of 1967).

(2) This Agreement supersedes the operation of Agreement AG3 of 1996.

4.—PARTIES BOUND

The parties to this Agreement are—

(1) (a) BHP Steel (JLA) Pty Ltd, carrying on business as BHP Steel, Building and Industrial Products Division—BHP Building Products, 88 Norma Road, Myaree, Western Australia, 6153.

(b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, 401-403 Oxford Street, Mount Hawthorn, Western Australia.

(c) All employees, whether members of the organisation specified above or not engaged in any of the classifications contained in the John Lysaght (Australia) Limited Award No. 27 of 1967, of which there are currently 30.

5.—DATE AND PERIOD OF OPERATION

This Agreement will operate from the beginning of the first pay period to commence on or after 1 March 1997. It will remain in force until 28 February 1999 and will not continue in force after its expiry date unless renewed on application of the parties.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement is to be read and interpreted in conjunction with the John Lysaght (Australia) Limited Award (No. 27 of 1967) and shall prevail to the extent of any inconsistency with that Award.

7.—PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to provide mechanisms by which continuous improvement in the Company's productivity and business performance can be facilitated and employees rewarded for achieving improvement targets and implementing projects designed to effect real definable productivity gains.

8.—IMPROVING BUSINESS PERFORMANCE

In order to support this agreement and help to achieve other aspirations of our industry and employees/union, there is a need to work together during 1997/98 to remove remaining barriers to full achievement of "world best" team-working practices in our workplaces.

Past improvements such as career paths, employee share plans and superannuation changes have led to more co-operative relationships and improved efficiency in many workplaces. Indeed some workplaces have achieved very good progress but there is an urgent need for widespread redesign of workplace arrangements to maximise efficiency through teamworking.

A comprehensive re-design of work arrangements (eg. roles/responsibilities, roster patterns, working relationships and remuneration systems) will deliver benefits to the Company and employees.

The Company will benefit from improved business performance due to full employee involvement in business improvement (eg. reducing costs, improving productivity, quality etc.).

This will allow employees to benefit from greater involvement in determining workplace practices, increased job satisfaction though changed roles and responsibilities and more attractive rosters.

Extensive involvement of all employees will be required. These broad discussions will not involve or resort to industrial action or arbitration. Union officials will be involved in these initiatives and participate in discussions as appropriate.

Award related concepts for consideration as part of team agreements include—

- Greater income protection— paid leave (sickness or other) not restricted to award, pay to continue on discretionary basis where workforce accepts need to achieve low (staff type) absence levels.

- Alternative methods of rostering to achieve improved leisure time for employees and work efficiencies subject to an effective system for measuring better performance in safety and work arrangements.

- Demarcation criteria—what is "legal, logical, safe and efficient" thereby ending traditional demarcations.
- Alternative remuneration systems such as annualised salaries (ie."all up" salaries replacing separate overtime, shift work and allowances, etc.)—to provide employees with income stability and encourage efficient work practices. Pay adjustment arrangements to provide regular increases reflecting market movements, team and other performance.
- Management of rostered days off to ensure they are taken within a reasonable time frame.
- Reduction in expenditure on consumables (gloves) by 50 percent for the year 1997/98 when compared to expenditure in 1996/97.

In order for these discussions to be effective they will be entered into voluntarily and without boundaries as to what can be discussed. Agreements will usually include the following requirements.

- The continuance of a performance related payment scheme to operate until 28 February 1999.
- 6 monthly consolidation of an amount into weekly wage payments based on actual implementation of projects designed to effect real productivity gains (Attachment 1).
- Stability of conditions for employees and stability of operations for the business.
- Discussions as to alternative employment agreements, designed to improve work arrangements for employees and business performance.
- Site negotiations which will focus on achieving commitment to workplace mechanisms (either committees, improvement teams or crews) that identify opportunities, action and ultimately improvement in site performance measures.

Therefore it is agreed that—

(a) A site review process will commence no later than end of January 1997 to determine—
- Development and implementation of site improvement mechanisms;
- Values that underpin our mission and goals;
- Site work arrangements;
- Most appropriate structure for the site;
- Opportunities for improvement;
- Relevant training and support, and will be completed by end March 1997.

(b) On completion of (a) above, the Agreement and site arrangements will be reviewed to determine what changes if any, will be necessary to support business improvement plans.

(c) PRPS arrangements, including the development of site or departmental measures, will be reviewed and finalised by the end of February 1997 and will become effective quarter end May 1997.

PRPS measures will be impactible by employees and offer real and tangible benefits to the business.

(d) There is commitment from employees to the achievement of the following key business plan outcomes through actively participating in business improvement initiatives.
- Elimination of unsafe acts and compliance with safety procedures and policies.
- Improving environmental performance;
- Reduction in cost per tonne;
- Implementing permanent resolutions to quality and performance measures;
- Reduction in plant non-productive time;
- Improved labour productivity.

(e) Rates of pay will increase as per Attachment 1, after ratification by the Western Australian Industrial Relations Commission and subject to there being no lost time due to industrial stoppage in seeking endorsement of these wage negotiations.

9.—KEY PERFORMANCE INDICATORS

For the first year of the operation of this Agreement the Key Performance Indicators will be—

(1) Delivery Performance;
(2) Errors Free Orders;
(3) Scrap and Downgrades.

Breaking down these three indicators to a number of factors that impact on their result assists in the process of identifying tasks for employee process improvement teams. Process improvement teams can then focus on these tasks.

Key Performance Indicators for the second year will be developed in the final quarter of 1997.

10.—PERFORMANCE

Performance Targets have been agreed for the first year and are set out below. Performance Targets for the second year will be agreed in the final quarter of 1997 and the resulting tables will be substituted for those below by application to vary the Agreement.

BHP BUILDING PRODUCTS—MYAREE
PERFORMANCE RELATED PAYMENTS SCHEME
(ENTERPRISE BARGAINING AGREEMENT 1997)

PERFORMANCE TARGETS FOR THE FIRST YEAR

MEASURE 1 — DELIVERY PERFORMANCE

QUARTER PERFORMANCE	1	2	3	4
OUTSTANDING	≥ 98.0	≥ 98.1	≥ 98.2	≥ 98.3
GOOD	97.9	98.0	98.1	98.2
ADEQUATE	97.8	97.9	98.0	98.1
POOR	< 97.7	< 97.8	< 97.9	< 98.0

MEASURE 2 — ERROR FREE ORDERS

QUARTER PERFORMANCE	1	2	3	4
OUTSTANDING	≥ 98.9	≥ 99.0	≥ 99.1	≥ 99.2
GOOD	98.8	98.9	99.0	99.1
ADEQUATE	98.7	98.8	98.9	99.0
POOR	< 98.7	< 98.8	< 98.9	< 99.0

MEASURE 3—SCRAP/DOWNGRADES

QUARTER PERFORMANCE	1	2	3	4
OUTSTANDING	≥ 2.10	≥ 2.05	≥ 2.0	≥ 1.95
GOOD	2.15	2.10	2.05	2.0
ADEQUATE	2.20	2.15	2.10	2.05
POOR	< 2.25	< 2.2	< 2.15	< 2.10

YEAR 2

Quarter 1 means the quarter finishing	30 May 1997
Quarter 2 means the quarter finishing	29 August 1997
Quarter 3 means the quarter finishing	28 November 1997
Quarter 4 means the quarter finishing	27 February 1998

11.—PAYMENT

(1) The appropriate percentage amount will be determined in respect of each quarter, in accordance with the table below. A maximum payment of 6.5% is possible under the scheme for exceeding target in all three KPI's of Delivery Performance (2.16%), Errors (2.16%) and Scrap/Downgrades (2.16%). The table provides for the following payments—

PRPS PAYABLE

	Delivery Performance	Errors	Scrap/ Downgrades	Total
Outstanding	2.16%	2.16%	2.16%	6.5%
Good	1.83%	1.83%	1.83%	5.5%
Adequate	1.16%	1.16%	1.16%	3.5%
Poor	0%	0%	0%	0%

The appropriate percentage amount as determined above, shall be applied to the gross wage of each qualifying employee for the relevant quarter, to calculate that employee's performance related payment.

For the purpose of determining the quarterly performance related payments, gross wage will include the total of the following earnings for the quarter: award and over award payments, overtime and shift allowance earnings, plus payments in respect of paid leave.

Excluded from gross earnings will be—

(a) payments for periods of absence on workers compensation where the absence has been for a period of more than twelve months; and

(b) performance related payments relating to a previous quarter which may have been paid during the quarter.

(3) The parties acknowledge that whilst quarterly performance related payments of 5.5% are targeted, actual payments may range from 0% to 6.5%. Targets to be met for a 5.5% quarterly performance related payment are to be realistically achievable, but to provide an added "insurance", topping up arrangements will be available. If in a particular quarter, a payment of less than 5.5% is made, an adjustment may be warranted at the completion of the fourth quarter. Such adjustment will be made only if the reasonably achievable target is met or bettered in each of the three KPI's in the fourth quarter.

When an adjustment is appropriate, the fourth quarter payment will include an additional amount equal to the difference between the sum of payments for the four quarters and 5.5% of gross earnings for the four quarters.

No top up adjustment will apply in an quarter where the results were affected by strike or other forms of industrial action.

Employees will be able to choose to enter into "salary sacrifice" arrangements for PRPS (in part or in full) so that the payment becomes an employer contribution to the employee's superannuation account.

12.—NO EXTRA CLAIMS

(1) It is a term of this Agreement that the unions undertake that for the period up to 31 December 1998, not to pursue any extra claims, Agreement or other (including any claims related to national or state wage case decisions), although the unions may commence discussions on renewal of claims after 1 November 1998.

(2) Notwithstanding the above, discussions will be allowed on a voluntary basis as to alternative employment agreements, which may involve a departure from existing Award provisions for a department or section, designed to improve work arrangements for employees and business performance. These discussions will not involve resort to industrial action or arbitration. This agreement does not prevent the parties from exercising any Award right.

13.—ELIGIBILITY FOR PAYMENT

Employees eligible for quarterly PRPS payments under this Agreement will be those employees employed by the week and in employment as at the end of the quarter.

Accordingly, casual employees are not eligible for quarterly PRPS payments.

14.—REVIEW

BHP Building Products will review progress toward improvement plans quarterly. Where results are below target, actions will be implemented to restore performance to the required level. Where improvements have reached sustainable levels, new targets and plans will be introduced to provide ongoing improvement.

15.—DISPUTE SETTLEMENT PROCEDURE

The provisions of Clause 3(5) of the John Lysaght (Australia) Limited Award, will be used to resolve any disputes which may emerge.

16.—SIGNATORIES TO THE AGREEMENT

A. Pringle (signed) 21—3—97
for on behalf of Date

BHP Steel (JLA) Pty Ltd, T/A
BHP Building Products—Myaree

J. Fiala (Signed) 21—3—97
for on behalf of Date

Communications Electrical, Electronic, Energy, Information Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, (Western Australian Branch)

ATTACHMENT 1

Wage Increase

Consolidating wage increase will total 10% during 1997/1998.

These will be phased in—

3%	-	effective first pay period January	1997
2%	-	effective first pay period July	1997
3%	-	effective first pay period January	1998
2%	-	effective first pay period July	1998

These increases will apply to weekly wage, supplementary, overaward and leading hand rates.

These increases are to take place in the context of continuing co-operation in achieving the outcomes identified in Clause 8 of the BHP Building Products Performance Related Payments Scheme Agreement 1997.

ATTACHMENT 2

Rates of Pay

NEW BASE	NEW SUPPL	NEW AWARD	NEW OVER-AWARD	NEW TOTAL	NEW HRLY RATE
375.6	21.2	396.8	15.9	412.7	10.8605
390.0	23.3	413.3	16.6	429.9	11.3132
412.8	28.3	441.1	17.7	458.8	12.0737
423.4	35.1	458.5	18.2	476.7	12.5447
435.1	41.2	476.3	19.2	495.5	13.0395
448.1	43.7	491.8	19.7	511.5	13.4605

BRADKEN PERTH, WESTERN AUSTRALIAN ENTERPRISE BARGAINING AGREEMENT 1995 No. AG 330 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bradken—A Division of the ANI Corporation Limited

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, WA Branch.

No. AG 330 of 1995.

SENIOR COMMISSIONER G. G. HALLIWELL.

31 January 1996.

REGISTRATION OF AN ENTERPRISE BARGAINING INDUSTRIAL AGREEMENT
No. AG 330 of 1995.

HAVING Heard Ms J. Dowling on behalf of the Applicant and Mr G. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Mr C. Young on behalf of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch and Mr A. Wadell on behalf of Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the following schedule titled the Bradken Perth, Western Australian Enterprise Bargaining Agreement, signed for me for identification, be registered as an Enterprise Bargaining Industrial Agreement and shall take effect from the beginning of first pay period on or after 12th December, 1995.

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

Schedule.

1.—TITLE

This Agreement shall be known as the Bradken Perth, Western Australian Enterprise Bargaining Agreement 1995.

1A.—STATE WAGE PRINCIPLES DECEMBER 1993

It is a condition of this Agreement that any variations to its terms on or from the 24th day of December 1993, including the Arbitrated Safety Net Adjustment of up to $8.00 per week shall not be made except in compliance with the Principles set down by the Commission in the Reasons for Decision in Matter No. 1457 of 1993.

2.—ARRANGEMENT

1. Title
1A. State Wage Principles December 1993
2. Arrangement
3. Application and Incidence of Agreement
4. Terms of Operation
5. Relationship to Parent Awards
6. Hours
7. Contract of Service
8. State Standards
9. Avoidance of Industrial Disputes
10. Wage Increases
11. Consultation in the Workplace
12. Performance Indicators
13. Productivity Reward Scheme
14. No Extra Claims
15. Signatures of the parties
Appendix A

3.—APPLICATION AND INCIDENCE OF AGREEMENT

(1) This Agreement shall apply at the establishment of Bradken, Perth and the incidence of this Agreement shall be as prescribed in the Metal Trades (General) Award 1966 (No. 13 of 1965) and the Transport Workers' (General) Award No. 10 of 1961 insofar as those provisions relate to the parties referred to in subclause (2) below.

(2) Those bound by this Agreement are—

(a) Bradken Perth ('the Company');

(b) The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch ('the CEPU');

(c) Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch ('the TWU');

(d) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch ('the AFMEPKIU'); and

(c) All persons employed by Bradken Perth, who are members or eligible to be members of the above unions.

4.—TERMS OF OPERATION

This Agreement shall operate from the beginning of the first pay period to commence on or after 12 December 1995 and shall remain in force until the end of the last pay period commencing on or before 10 March 1996.

5.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted in conjunction with the Metal Trades (General) Award 1966 (No. 13 of 1965) and the Transport Workers' (General) Award No. 10 of 1961, provided that where there is any inconsistency, this Agreement shall take precedence to the extent of the inconsistency.

6.—HOURS

(1) Forty (40) ordinary hours are to be worked by each employee in each week with two (2) of these ordinary hours worked being credited to the provision of rostered days off.

(2) Not less than eight (8) ordinary hours are to be worked in any one day, prior to the payment of any overtime.

(3) Subject to subclause (1) of this clause the ordinary hours of work will not exceed 10 hours on any day, Monday to Friday, and except in the case of shift employees, shall be worked between the hours of 6.00 am and 6.00 pm.

(4) The ordinary hours of work may be altered by agreement between the employer and the majority of employees concerned in a section or sections.

(5) (a) Where the Company wishes to alter the work cycle arrangement for any employees, the Company must give not less than one month's notice of its intention to do so to the employees affected by the change.

(b) During this notice period, the Company will consult with the majority of employees concerned in a section or sections.

(6) Any dispute as to the operation of any work cycle in any area for any employees will be resolved by following the procedure set out in Clause 9.—Avoidance of Industrial Disputes of this Agreement.

(7) Subject to prior approval by the appropriate supervisor, where an employee requires time off from work during normal ordinary time hours for which the employee would not be entitled to payment, he or she may make up the time so lost, and will be paid at ordinary time rates for the time so worked.

The time made up under the above arrangement is to be agreed with the appropriate supervisor and should be made up within the financial week where the absence occurred where practical but not later than the following financial week.

(8) Notwithstanding the provisions of Clause 13(3)(g) of the Metal Trades (General) Award 1966, (No. 13 of 1965), seven (7) rostered days off will be accrued which shall be allowed and taken to coincide with the Christmas shut-down.

(9) The balance of five (5) days may be taken as required by the employee throughout the year by agreement with their supervisor and having full regard for the necessity of maintaining production.

(10) Any remaining accrued rostered days due at the time of taking annual leave must be taken consecutively with that leave.

(11) Where shift work is worked it shall be worked in accordance with the shift work provisions in the Metal Trades (General) Award 1966 (No. 13 of 1965).

7.—CONTRACTS OF SERVICE

(1) All employees shall continue to assist in the process of skill transfer with in-house training.

(2) All non-trades employees shall perform any tasks they are directed to which are within their skill, competence and training.

(3) All employees shall perform any tasks they are directed to which are incidental or peripheral to their main task provided that employees shall only be required to perform work in accordance with their skills and training and which is safe.

8.—STATE STANDARDS

This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings or in standards of the West Australian Industrial Relations Commission for set hours of work, annual leave or long service leave.

9.—AVOIDANCE OF INDUSTRIAL DISPUTES

The following dispute settling procedure shall apply in the workplace—

(1) Any matter affecting one or more employees at Bradken Perth shall, in the first instance be taken up by those affected with the immediate Supervisor or Foreperson responsible for the employee/s concerned, in company with, if requested by the employee/s a consultative committee person and/or duly accredited shop steward.

(2) If agreement is not reached pursuant to subclause (1) above, the consultative committee person/shop steward shall approach the Manager or other nominated Representative of the Company, fur further discussions and/or negotiations about the matter affecting the employee/s.

(3) If the matter is not resolved at this level, the consultative committee person/shop steward shall inform the Secretary of the relevant union, or his/her nominee, of the nature of the matter in dispute and a conference shall be arranged as soon as possible be-

tween a representative or management and state official of the union.

(4) Without prejudice to either party, whilst the above procedure is being effected, all parties shall make every endeavour to ensure that work continues normally.

(5) A dispute which cannot be settled by following procedures prescribed in subclauses (1), (2) and (3) of this clause may be referred by either union or management to the Western Australian Industrial Relations Commission.

(6) The dispute shall not be referred to the Western Australian Industrial Relations Commission until the steps in subclauses (1), (2) and (3) have been completed.

(7) All parties are committed to this procedure.

(8) In the event of any union calling mass meetings of members or rallies or any other union initiative not specific to Bradken Perth that would cause Bradken Perth employees to disrupt normal production unless the union shop steward receives seven (7) days' written notice of intended stoppage no Bradken Perth employees will participate.

(9) The union shop steward will upon receipt of such notice immediately notify the consultative committee and management of the notice.

(10) The consultative committee will meet and devise whatever measures are possible to minimise the impact of the intended action on Bradken Perth and its customers.

(11) No voting on action to be taken by Bradken employees is to be conducted until as many employees as is practical have been fully briefed by unions and the consultative committee and been afforded not less than two days to consider the issues.

10.—WAGE INCREASES

The following wage increases shall apply—

PAY CLASS	CLASSIFICATION	'C' CLASS	COLUMN 1 PRESENT RATE	COLUMN 2 2.5% ENTERPRISE INCREASE 12.12.95
001	JOBBING MOULDER	C10	13.2050	13.5350
	M/C MOULDER(S)	C10S	13.2050	13.5350
	PLATE MOULDER(S)	C10S	13.2050	13.5350
	MACHINIST 1ST CLASS	C10	13.2050	13.5350
	FITTER	C10	13.2050	13.5350
	WELDER 1ST CLASS	C10	13.2050	13.5350
	WELDER (S) CLASS	C10S	13.2050	13.5350
	FLAME WASHER(S)	C10S	13.2050	13.5350
	ARC AIR OP (S)	C10S	13.2050	13.5350
	CARPENTER	C10	13.2050	13.5350
	TRADESMAN	C10	13.2050	13.5350
031	TEAM LEADER	C10	14.2050	14.5600
002	INSPECTOR	C9	13.8525	14.2000
	PATTERN MAKER	C9	13.8525	14.2000
003	LABOURER	C12	11.2625	11.5450
	TRUCK DRIVER	C12	11.2625	11.5450
	FURNACE LABOURER	C12	11.2625	11.5450
	DRESSER/GRINDER	C12	11.2625	11.5450
	PATT/SHOP STOREMAN	C12	11.2625	11.5450
	STOREMAN	C12	11.2625	11.5450
	FITTER LABOURER	C12	11.2625	11.5450
	CLEANER	C12	11.2625	11.5450
	MACHINE/PLATE MOULDER	C12	11.2625	11.5450
	FLAME WASHER/ARC AIR	C12	11.2625	11.5450
	WELDER 2ND 3RD 4TH CLASS	C12	11.2625	11.5450
004	TEST OPERATOR	C12	11.6400	11.9300
	MANIPULATOR DRIVER	C12	11.6400	11.9300
028	FURNACE LABOURER (COMM)	C12	11.8750	12.1725
	FURNACE PERSON STAGE 1	C12	12.4750	12.7875
001	FURNACE OPERATOR STAGE 2		13.2050	13.5350
029	FURNACE MELTER	(BK)	16.0275	16.4275
005	ANNEALER MAN	C12	11.4800	11.7675
006	MILLIMAN (*L.H.1)	C12	11.7250	12.0175
007	CRANE DRIVER	C11	12.2575	12.5650
008	FORKLIFT DRIVER 98% APPRENTICE 4 YEAR	C10	12.9600	13.2850
013	1ST YEAR 42%		5.6575	5.7987
014	2ND YEAR 55%		7.4075	7.5925
015	3RD YEAR 75%		10.1000	10.3525
016	4TH YEAR 88%		11.8500	12.1462
		C8	14.4791	14.8412
		C7	15.1455	15.5250
		C6	16.3705	16.7800
		C5	17.0183	17.4437

11.—CONSULTATION IN THE WORKPLACE

(1) A Consultative Committee shall meet at least monthly in the workplace or more often as required.

(2) (a) The Consultative Committee shall consist of one member from each work cell elected by the employees in that work cell, one elected shop steward and at least one representative from management.

(b) A union official may attend any such meetings.

(3) The recognised work cells are as follows—

Office
Maintenance/Machineshop
Aftercast
Beforecast
Furnace
Petternshop
Shop Steward
Management Representative

(4) As far as possible the agenda for the next meeting of the Consultative Committee shall be identified at the end of each meeting and posted in the workplace at least seven days prior to the next meeting.

(5) Minutes of the meeting shall be maintained.

(6) The Company and the Unions will co-operate in the provision of training for the development of quality consultative processes.

(7) Monthly work cell meetings will be scheduled and conducted during normal working time. Meetings will require the attendance of all work cell members, will be limited to one hour's duration and will be chaired by the Consultative Committee member for the respective work cell.

12.—PERFORMANCE INDICATORS

The following Key Performance Indicators will form an overall plant performance guide to productivity improvement.

- On time deliver
- Key machine availability
- 1st trials O.K.
- Wasters
- Work in process
- Energy costs/Dressed tonne
- Maintenance costs

The indicators will be reported to the entire workforce on a regular basis.

In addition to the above, work cell specific Key Performance Indicators will be developed by all work cells to more accurately assess work section improvement in performance.

13.—PRODUCTIVITY REWARD SCHEME

With effect from the beginning of the first pay period on or after 12 December 1995 Amendment No. 1 to the Productivity Reward Scheme ('PRS') per Appendix A to the Agreement will apply.

14.—NO EXTRA CLAIMS

The parties agree not to make any further claim for the life of this Agreement other than so consistent with a reclassification or skills upgrade as per the structural efficiency principles.

15.—SIGNATURES OF PARTIES

THE COMMON SEAL of)
Bradken Perth (ACN No.....))
was hereunto affixed in the presence of:)

Sgd

_____ MANAGER

Signature Title Date: 14.12.95

Sgd

_____ HR MANAGER

Signature Title Date: 14.12.95

THE COMMON SEAL of)
Automotive, Food, Metals, Engineering, Printing)
and Kindred Industries Union of Workers)
- Western Australian Branch was hereunto)
affixed in the presence of:)

Sgd
_____ ASSISTANT SECRETARY
Signature Title Date: 11.12.95

Sgd
_____ ADVOCATE
Signature Title Date: 11.12.95

THE COMMON SEAL of)
The Communications, Electrical, Electronic, Energy)
Information, Postal, Plumbing and Allied Workers)
Union of Australia, Engineering and Electrical)
Division, Western Australian Branch was hereunto)
affixed in the presence of:)

J.D. FIALA
_____ ORGANISER
Signature Title Date: 5.12.95

C. YOUNG
_____ INDUSTRIAL ADVOCATE
Signature Title Date: 5.12.95

THE COMMON SEAL of)
Transport Workers Union of Australia Industrial)
Union of Workers, Western Australian Branch)
was hereunto affixed in the presence of:)

Sgd
_____ ASSISTANT SECRETARY
Signature Title Date: 12.12.95

BROWNES DAIRY NORTH PERTH (ENTERPRISE BARGAINING) AGREEMENT 1996
No. AG 65 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Browns Dairy Pty Ltd

and

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

No. AG 65 of 1997.

COMMISSIONER J.F. GREGOR.

18 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 65 OF 1997.

HAVING heard Ms C Gray on behalf of the first named party and Mr J Rosales-Castaneda 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 Browns Dairy North Perth (Enterprise Bargaining) Agreement 1996, filed in the Commission on 7 March 1997, be and is hereby registered as an Industrial Agreement.

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

1.—TITLE

This Agreement will be known as the "Brownes Dairy North Perth (Enterprise Bargaining) Agreement 1996",

No. AG 65 of 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Date and Period of Operation
5. Definitions
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Commitments
9. Flexibility Clause
10. Contract of Employment
11. Disputes Settlement Procedure
12. Union Business
13. Parental Leave
14. Introduction of Change
15. Redundancy
16. Protective Clothing and Equipment
17. Training
18. Meal Break
19. Equal Employment Opportunity
20. Movement in Wages

APPENDICES

A. Rate of Wage
B. SQP Consultative Committee Constitution
C. Key Performance Indicators
D. Equal Employment Opportunity and Affirmative Action Program
E. Maintenance Flexibility Agreement
F. Process Control Operators
G. Parental Leave

3.—PARTIES BOUND

(1) This Agreement will be binding upon the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, Brownes Dairy Pty Ltd and all employees who are or are eligible to be members of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch. It is estimated that this agreement will apply to 51 employees.

4.—DATE AND PERIOD OF OPERATION

This Agreement will operate from the commencement of the first pay period on or after 15 December 1996 and will remain in operation until 15 December 1998.

5.—DEFINITIONS

(1) "the award" means the Dairy Factory Workers' Award 1982;

(2) "the Company" means Brownes Dairy Pty Ltd;

(3) "the Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

(4) "the Commission" means The Western Australian Industrial Relations Commission

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement will be read and interpreted wholly in conjunction with the Dairy Factory Workers' Award 1982.

(2) Where there is any inconsistency between this Agreement and the award, this Agreement will prevail to the extent of any inconsistency.

(3) This Agreement in addition to the award prevails to the extent of any inconsistency over any other registered or unregistered agreement made between the parties prior to the registration of this Agreement.

7.—SINGLE BARGAINING UNIT

(1) The Union party to this Agreement, with the employees covered by the relevant award, has formed a single bargaining unit.

(2) The single bargaining unit has endorsed the terms of this Agreement.

(3) The single bargaining unit will be provided by Brownes Dairy Pty Ltd with all relevant information to enable effective monitoring of the implementation of initiatives identified in this Agreement.

8.—COMMITMENTS

(1) The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(2) This Agreement will not operate so as to cause any employee to suffer a reduction in ordinary time earnings as per the Dairy Factory Workers Award 1982, or to depart from the standards of the Commission

(3) The parties undertake that the increases referred to in Clause 20.—Movement in Wages of this Agreement will be the only increases to apply during the life of the Agreement provided that further increases may result from real productivity improvements implemented and quantified by the SQP consultative process.

(4) The parties will review the terms of this Agreement no later than six months prior to its expiration, commencing no later than 15 June 1998.

(5) The parties will assess the achievement in productivity and efficiency during the term of this Agreement.

(6) The parties agree that following the process of reviewing this Agreement it will be renewed or replaced.

(7) The parties commit to opposing any attempt by any other person, employees or organisations to become a party to this Agreement.

(8) The SQP consultative committee will be responsible for ongoing discussions regarding the relocation of Brownes Dairy to Peters Balcatta. The parties are committed to ensuring that all employees are informed of all matters pertaining to their employment and that all concerns are addressed. The terms and conditions for employees relocating will be agreed upon by the Company, the Union and the employees prior to relocation.

(9) The parties are committed to avoiding redundancies. Where redundancies are unavoidable then the terms and conditions as provided for in the Enterprise Bargaining Agreement would apply.

(10) The parties agree that the terms and conditions of this Enterprise Bargaining Agreement will continue unless replaced by a new Enterprise Bargaining Agreement.

(11) The parties agree to continue to research and develop options for an annualised wage and alternative shift arrangements with a view to implementation during the life of this Agreement.

9.—FLEXIBILITY CLAUSE

(1) The parties to this Agreement commit themselves to a process of developing a work place free from unnecessary demarcation where employees can use their skills and competence.

(2) It is also recognised that the breaking down of demarcations and increased flexibility of the workforce will be achieved through consultation where the relevant issues will be discussed and agreed to.

(3) In this regard, employees agree to carry out a range of duties which may or may not involve the use of selected tools, plant and equipment as agreed to by the consultative committee, the Union and the Company and subject to employees being fully trained and the duties safe, legal and within their skill and competence to perform. For example, discussions and consultations will occur to examine which additional minor maintenance tasks on machines could be handled by Production Operators.

10.—CONTRACT OF EMPLOYMENT

(1) An employee may be engaged as:

(a) A full-time employee or part-time employee in accordance with the provisions of the Award.

(b) A temporary employee by agreement between the employer and the Union; or

(c) A casual employee, engaged by the hour subject to the maximum weekly ordinary hours (ie: exclusive of overtime) being 38. Such employment will be a period of up 1 month or for a period exceeding one month by agreement between the Company and the Union.

(2) Where practicable, the Company will notify casual employees that they are not required to work on the next working day. If a casual employee presents for work on a day on which he or she might reasonably have expected to be required for work without having been notified by the Company in accordance with this subclause that he or she is not so required, then such an employee will receive four hours pay at the appropriate casual rate.

(3) Probationary Employees

An employee other than a casual may be engaged for an initial probationary period of not more than 3 months on the following basis:

(a) the Company will advise an in writing employee on or before commencement whether the employee is engaged for an initial probationary period, and if so, the length of the probationary period;

(b) regular performance reviews will be conducted during the probationary period. Employees have the right to have a union representative at such reviews.

(c) any performance deficiencies will be addressed with counselling and/or training and the employee will be allowed an opportunity to correct those deficiencies.

(d) the purpose of the probationary period is to allow both the Company and the employee to decide whether to continue the employment beyond the probationary period, and therefore the employee will be advised that employment beyond the probationary period is not guaranteed. The Union representative will be notified of the performance of employees on probation.

(e) if, at any time during the probationary period, either the employee or the Company give one week's notice of termination of the employment, the probationary employee's employment will end.

(f) if, at the end of the probationary period, a decision is made not to offer further employment, the probationary employee's employment will end

(4) It is a condition of employment that each employee must:

(a) perform work as the Company, may, from time to time, reasonably require having regard to the limits of the employee's skill, competence and training;

(b) perform the full range of duties within the employee's classification, including any duties as may be directed by the Company having regard to the limit of the employee's skill, competence and training.

(c) perform work without regard to any demarcations or limitations, providing the work to be performed is within the employee's skill, competence and training;

(d) transfer between various departments without restrictions providing the duties are within the employee's skill, competence and training;

(e) work reasonable overtime as may be required by the Company;

(f) comply with all safety regulations, policies and procedures determined by the Company or as prescribed by Government Regulations;

(g) use as directed by the Company all protective clothing and equipment provided by the Company; and

(h) observe all the Company regulations, policies and procedures.

(5) Disciplinary Procedure

(a) Where an employee engages in unsatisfactory conduct the Company may, as appropriate:

(i) informally counsel the employee;

(ii) verbally warn the employee;

(iii) warn the employee in writing;

(iv) suspend the employee with pay, the period of suspension will not exceed 1 week;

(v) dismiss the employee with notice or with pay in lieu of notice.

(b) Where a representative of the Company engages in any discussions with an employee concerning any conduct of an employee which may lead to dismissal or other disciplinary or counselling measures being taken by the Company, the employee is entitled to elect to have either another employee or a Union representative present during the discussion. The representative of the Company will remind the employee of that entitlement at the beginning of the discussion.

(c) When counselling or warning an employee concerning unsatisfactory conduct engaged in by that employee, the Company's representatives will:

(i) specifically identify the conduct complained of;

(ii) explain why the conduct is unacceptable by the Company; and

(iii) explain the consequences if the employee again engages in that unsatisfactory conduct.

(d) No record will be kept by the Company of informal counselling of an employee. Where a record is kept by the Company of a verbal warning given to an employee, the employee and any other employee or Union representative present will be given the opportunity to verify the accuracy of the record within a reasonable time of the warning being given. A record of the warning will not be kept for more than 12 months.

(e) Nothing in this clause affects the Company's right to dismiss an employee without notice for misconduct which justifies summary dismissal.

(6) Performance Counselling

If the Company considers that the performance of any employee is unsatisfactory, the Company's representative will :

(a) Discuss the matter informally with the employee to ascertain the cause/reason for poor performance and look at:

(i) the areas of the employee's performance which are unsatisfactory;

(ii) the reasons for the employee's unsatisfactory performance;

(iii) the steps available to the Company which would assist the employee to perform satisfactorily, which may include arranging for the employee to receive training or additional training or altering the employee's working conditions; and

(iv) the steps available to the employee to remedy the unsatisfactory performance (this includes independent professional counselling).

Note: The Union will be kept informed at all times.

(b) During any such informal discussions, the employee is entitled to elect to have a Union representative present during the discussion. The representative of the Company will remind the employee of that entitlement at the beginning of the discussion.

(c) If, after informal discussions, the Company still considers that the performance of the employee is unsatisfactory, the Company will advise the employee in writing of:

(i) the areas of the employee's performance which are unsatisfactory;

(ii) the company's response to any reasons offered by the employee for his or her unsatisfactory performance;

(iii) the steps which would assist the employee to perform satisfactorily;

(iv) the steps of the employee to remedy the unsatisfactory performance; and

(v) the time allowed for improvement before further assessment.

Note: The Union will be kept informed as to what progress has been made.

(d) Where the required improvement has not occurred following the steps set out in paragraph (a) and (b) above, give the employee a written warning that failure to improve performance within a given time may lead to the employee's suspension or dismissal from employment, and setting out the steps necessary to be taken by the employee to improve their performance to a satisfactory level.

(e) Where the performance of an employee then continues to be unsatisfactory, suspend the employee with pay for a time specified in writing by the Company or dismiss the employee with notice.

(f) If despite the efforts of the parties, the above process fails to bring about a resolution of the issue, the matter may be referred without prejudice to the Commission.

(7) Termination of Employment

(a) The minimum notice required to be given by the Company or the employee to terminate employment will be:

(i) for casual employees—one hour's notice;

(ii) for probationary employees—as provided in subclause (3) Probationary Employees of this clause; and

(iii) for all other employees—in accordance with the provisions below:

Period of Continuous Service	Period of Notice
Not more than one year	One week
More than one year but not more than three years	Two weeks
Not more than five years	Three weeks
More than five years	Four weeks

The period of notice is increased by one week if the employee is over 45 years old and has completed two years' continuous service with the Company.

(b) By arrangement between the employee and the Company, an employee will be entitled to up to eight hours time off per week during the notice period for the purpose of seeking other employment.

(c) Notice of termination of employment may also be effected by the payment or forfeiture of wages for the relevant notice period, providing that employment may be terminated by part of the period of notice specified and part payment or forfeiture of wages in lieu of notice.

(d) Payment or forfeiture of wages in lieu of notice will be calculated on a basis of the wages the employee would have received for the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.

(e) The Company may dismiss an employee without notice for misconduct which justifies summary dismissal and in such cases, wages will be paid up to the time of dismissal only.

(f) Nothing in this clause prevents the Company and the employee agreeing to a lesser period of notice than that otherwise required by this clause. Permission to do so will not unreasonably be withheld.

(8) Use of Contractors Clause

(a) As part of its commitment to job security and to training for its employees, the Company will offer work to employees wherever possible before that work is contracted out.

(b) Consideration before the work is contracted out include employee availability, skill and competence, training etc.

11.—DISPUTE SETTLEMENT PROCEDURE

(1) The objective of the dispute settlement procedure is as follows:

(a) To promote resolution of disputes by measures based on consultation, co-operation and discussion;

(b) To reduce the level of industrial confrontation;

(c) To avoid interruption to the performance of work and the consequential loss of production and wages; and

(d) To improve the quality of the work environment.

(2) Where a grievance, complaint, claim or any matter which is likely to result in a dispute arises between the employer and an employee or group of employees the following procedure will apply:

(a) The employee or group of employees will discuss the matter with their immediate supervisor(s).

(b) The parties are committed to resolving issues within 24 hours but no longer than 48 hours after which time the matter will be referred to the Union Representative for discussion with the employer representative.

(c) Where a negotiated settlement cannot be reached within seven days the parties shall apply to the Commission or to a mutually agreed independent arbitrator for resolution. The parties shall abide by the decision of the Commission or the independent arbitrator.

(3) The parties are committed to promoting resolution of disputes in a consultative environment.

12.—UNION BUSINESS

(1) During the term of this Agreement, the Company undertakes to provide and maintain the facility for Union subscriptions to be deducted on behalf of employees by payroll deduction. The Union will be provided with a list of employees for whom fees have been deducted, the period for which fees were deducted, and the amount deducted for each employee.

(2) At the time of engagement all new employees will be provided by the employer with information about the Union. Such information will be in the form of a "New Member Kit" to be supplied by the Union. The elected on site Union Representative will be allowed reasonable time to discuss Union Membership with new employees within one week of commencing employment.

13.—PARENTAL LEAVE

Parental Leave will be in accordance with the provisions of Appendix G—Parental Leave of this Agreement.

14.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify

(a) Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have "significant effects" on employees, the employer shall notify the employees who may be affected by the proposed changes and the Union.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have "significant effects".

(2) Employer's Duty to Discuss Change

(a) The Company shall discuss with the employees affected and the Union, the introduction of the changes referred to in subclause (1) of this clause among other things, the effects the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.

(b) The discussion shall commence as soon as is practicable after a definite decision has been made by the Company to make the changes referred to in subclause (1) of this clause.

(c) For the purpose of such discussion, the Company shall provide in writing to the employees concerned and the Union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the Company's interests.

15.—REDUNDANCY

(1) Discussions Before Terminations

(a) Where the Company has made a definite decision that the Company no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the Company shall hold discussions with the employees directly affected and with the Union.

(b) The discussion shall take place as soon as is practicable after the Company has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.

(c) For the purpose of such discussion the Company shall provide in writing to the employees concerned and the Union all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that the Company shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (1) of this clause the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the Company may at the Company's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.

(3) Severance Pay

(a) In lieu of the notice prescribed for ordinary termination in clause 10.—Contract of Employment hereof, an employee whose employment is terminated for reasons set out in paragraph (a) of subclause (1) above shall be entitled to—

(i) four weeks' notice or payment in lieu thereof;

(ii) two weeks' pay for each year of service to a maximum of 30 weeks' for 15 years service;

(iii) one week's pay for each year of service after 15 years to a maximum of 10 weeks' for the years between 15 and 25; and

(iv) payment of $1,000.00 for each completed year of service to a maximum of $10,000.00

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

Severance will be paid on a pro rata formula calculated in years and months.

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.

(b) For the purpose of this clause continuity of service shall not be broken on account of—

(i) any interruption or termination of the employment by the Company if such interruption or

termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

(ii) any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by the Award or this Agreement or on account of leave lawfully granted by the employer;

(iii) any absence with reasonable cause, proof whereof shall be upon the employee; or

(iv) any absence from work on account of workers' compensation.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by the Award shall not count as time worked.

(c) Service by the employee with a business which has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1—4 shall also constitute continuous service for the purpose of this clause.

(4) Employee Leaving During Notice

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

(5) Alternative Employment

The Company, in a particular redundancy case, may make application to the Commission to have the general severance pay prescribed varied if the employer obtains acceptable alternative employment for an employee.

(6) Time Off During Notice Period

(a) During the period of notice of termination of employment given by the Company, an employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause that employee shall for the purpose of seeking other employment be entitled to be absent from work during each week of notice up to a maximum of eight ordinary hours without deduction of pay.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the Company, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(7) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a) of subclause (1) of this clause, the Company shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Superannuation Benefits

(a) Subject to further order of the Commission where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (3) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to Company contributions only.

(b) If the superannuation benefit is greater than the amount due under subclause (3) of this clause then the employee shall receive no payment under that subclause.

(c) Provided that benefits arising directly or indirectly from contributions made by the Company in accordance with an Award, agreement or order made or registered under the Industrial Relations Act, 1979 shall not be taken into account unless the Commission so orders.

(9) Employees with Less Than one Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on the Company 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.

(10) 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 specified period of time or for a special task or tasks.

(11) Dispute Settlement Procedure

Any dispute under these provisions shall be referred to the Commission.

16.—PROTECTIVE CLOTHING AND EQUIPMENT

(1) The Company will provide to employees suitable protective clothing and equipment when necessary and such clothing and equipment will be worn by employees, as directed by the employer.

(2) Such clothing and equipment will remain the property of the Company and will be returned when required in good condition, fair wear and tear excepted.

(3) Where an employee is required to wear a special uniform, such uniform will be provided by the employer. The uniform will remain the property of the employer and will be returned when required in good condition, fair wear and tear excepted.

(4) The Company will provide and maintain adequate first aid equipment on the premises.

17.—TRAINING

(1) The parties to this Agreement are committed to external, industry and enterprise training of employees to achieve:

- higher skills relevant to the needs of Brownes Dairy, North Perth;
- multi-skilling of employees to the level required for operational efficiency and flexibility;
- a career path within Brownes Dairy, North Perth;
- retraining to maintain pre-existing skills;
- adjustment to technological changes; and
- greater efficiency and job satisfaction.

(2) A training program will be developed consistent with:

(a) The current future skill needs of Brownes Dairy;

(b) The size, structure and nature of the operations of Brownes Dairy; and

(c) The need to develop vocational skills relevant to the Company through courses conducted by accredited educational institutions and providers.

(3) All costs associated with standard fees, prescribed text books and materials incurred by the employee in connection with training required by the Company shall be reimbursed upon production of receipts. All items so purchased shall remain the property of the Company and shall be made available at all times to the employees during the period of training or where relevant for on the job training with the employees being responsible to maintain the items in good condition.

(4) Travel costs incurred by an employee undertaking training required by the Company which exceed those normally incurred in travelling to and from work shall be reimbursed.

(5) Authorisation for expenditure in relation to the costs mention in subclause (3) and (4) of this clause shall be obtained prior to such expenditure being incurred.

(6) Payment for SQP Meeting and Training

(a) Overtime

Where an employee works beyond their rostered finishing time due to attending a SQP Meeting or a Training session they will be paid at single time only for those hours.

Where an employee attends a SQP Meeting or a Training session and due to rostering was unable to have a 10 hour break then the provisions of the Award covering the employee will apply for those hours.

NB: All reasonable attempt must be made to ensure that a 10 hour break is provided for.

(b) Shift Allowances

If the employee is attending a Training session and they normally would have been paid a shift allowance for that day had they been at work, then they will receive the shift allowance payment.

(c) Meal Breaks

Where a meal break occurs during a Training session it will be unpaid time.

(d) Long Term Training—eg Week or More

Payment will be a single time with a day shift loading where the relevant Award provides for such loading payment.

18.—MEAL BREAK

(1) Changes to meal breaks will be done in consultation and agreement with the Union, employees and management in order to accommodate operational needs.

(2) Meal Allowance on Overtime

Where an employee is required to work overtime for more than two hours he/she will be paid a $7.00 cash meal allowance.

19.—EQUAL EMPLOYMENT OPPORTUNITY

The Company is an equal opportunity employer and is committed to an Affirmative Action Program as detailed in Appendix D—Equal Opportunity and Affirmative Action Program hereof.

20.—MOVEMENT IN WAGES

(1) In addition to the productivity based wage increases detailed below, the following increases will apply to the employees covered by this Agreement:

(a) 3% increase on entering into this Agreement payable from the 1st pay period on or after 15/12/96

(b) 3% increase payable from the 1st pay period on or after 15/05/98.

(c) A productivity related payment will be paid at the end of each year of this Agreement. This payment will be a minimum of 1% and to a maximum of 4% and will be paid for the achievement of agreed Key Performance Indicators.

(d) The SQP Consultative Committee will oversee the process for introducing KPI's.

(e) The training and resources required for the successful introduction of KPI's will be agreed to in consultation with the Union and management.

(f) Employees and the Union will be kept up to date as to the progress of performance relating to the Key Performance Indicators.

APPENDIX A—RATES OF WAGE

W.E.F. from the 1st pay period on or after 15 December 1996

Classification	Total Rate $
DPW—Grade 1	$404.80
DPW—Grade 2	$445.90
DPW—Grade 3	$454.80
DPW—Grade 4	$464.70
DPW—Grade 5	$484.80
DPW—Grade 6	$494.70
DPW—Grade 7	$514.80

APPENDIX B—S.Q.P. CONSULTATIVE COMMITTEE CONSTITUTION

(1) Preamble

The Union and the Company are committed to improved and effective consultation in the workplace and to provide all employees with an opportunity to participate fully. All representatives fully support and endorse the S.Q.P. (Safety, Quality and Productivity) program as a means of ensuring the future viability of the Company.

Management and Unions also agree that effective consultation is dependent upon:

- information sharing;
- facilities and training for representatives;
- commitment from both sides.

It is therefore agreed that the establishment of a consultative committee is the most appropriate method whereby the above principles can be practised and upheld.

(2) Objectives of the Committee

The objectives of the committee will be:

- to increase the quality of working life for all employees, particularly in the areas of job design, skill formation, training and the working environment both physical and mental;
- to improve job safety, quality and productivity;
- to increase the competitiveness of the Company and its products, by establishing world class manufacturing practices, thereby increasing job security ensuring longevity of the Company;
- to establish a culture of continuous improvement at the enterprise.

(3) Terms of Reference

The following matters will be discussed at the committee, and where appropriate, decisions made and agreements reached will go the Management and/or Steering committee in the form of recommendations, to enable decisions made by the Company to take into account the views of the workforce.

To be responsible for the S.Q.P. program specifically:

- the day to day activities of the S.Q.P. project;
- to establish the S.Q.P. teams;
- to identify the training needs for the S.Q.P. teams;
- to deal with the recommendations coming from the S.Q.P. teams and other sources;
- to ensure full communication of progress to all staff;
- current market conditions and general conditions of the industry (including the impact of any national industry development plan on the Company);
- the introduction of new products, technology/machines or new or revised work methods and the associated planning of layout, training, job numbers, skill requirements;
- Company training plans developed in accordance with future career paths;
- the Company's affirmative action policy and programs and equality of opportunity within the workplace;
- occupational health and safety matters will be referred to the Safety S.Q.P. Team for their consideration and recommendation;
- in the future at a time agreed by the Union, the Committee will discuss changes to do with the implementation of the restructured awards in the workplace or the establishment of an enterprise agreement, and make recommendations to the Steering Committee;
- any other matters raised by the Union, employees or management which impact on Union members or the efficiency of the Company other than those matters raised in the following section, "Matters Requiring Central Union Involvement".

(4) Matters Requiring Central Union Involvement

Most matters specific to work organisation in the (plant) can be discussed at the Consultative Committee. The purpose of such discussion being the resolution of any issues. However, some matters which may be raised go to award areas. These matters include but are not limited to:

- hours of work (including shift changes);
- penalty rates;
- leave loading;
- sick leave;
- holidays.

Any item which is an award matter must be referred to the Steering Committee.

(5) Composition

(a) The Consultative Committee will consist of a maximum of eight representatives.

Initially all members of the committee are nominated for an initial period of 12 months from the date of this charter, after this period an election shall be called for nominations for four employee representatives. At the completion of a committee member's term, they are eligible for re-election for an additional term. Thereafter, a period of six months shall apply before re-election.

(b) Any committee member who ceases to be an employee of the Company, ceases to be on the committee and Union/management will elect/appoint a replacement as appropriate. Re-election of the Union representatives will be determined by the Union. In addition, both Union officials and appropriate management officers may be invited by their representatives to attend meetings and address issues as agreed by the Committee.

(c) The appointment of management representatives will be determined by management and the appointment of Union representatives will be determined by the Union. All Union representatives shall be employees of the enterprise concerned.

(d) In the determination of Union representatives on the Committee, Union(s) shall give consideration to:

- the make up of the workforce—in particular the proportion of women, migrants and juniors;
- the size of the workforce;
- the number of distinct operations at the workplace;
- shift arrangements;
- the corporate structure;
- other existing consultative mechanisms.

(e) Considering the size and scope of the Company's operations, the Steering Committee shall encompass both the North Perth and the Brunswick sites.

(f) The Committee, once established, may invite persons to attend specific meetings.

(6) Terms of Office

All members appointed to the Committee shall hold office for a period of 12 months subject to clause (1) of this appendix, and thereafter for a period of six months.

(7) Meetings

The committee will endeavour to meet as required during paid time in normal working hours.

(8) Quorum

Comprising of four representatives of which one is from management, one from the Union and two others from the workplace.

(9) Chairperson

The chair will be elected by the consultative Committee for an initial period of three months, then rotated amongst other members of the Consultative Committee.

(10) Secretary

A secretary shall be appointed for the purpose of recording minutes, preparation and distribution of agendas and other administrative duties. The administrative requirements of this position shall be provided by the Company.

(11) Agenda

All members of the Committee may submit items. A Union representative, a management representative and the secretary shall meet at least one week prior to each meeting to formulate the agenda and circulate it together with all relevant written information and documents, where frequency of meetings permits.

(12) Minutes

The secretary to take the minutes and type. The minutes will be distributed as quickly as possible. A copy of the draft minutes will be sent to the Steering Committee members. The minutes will be formally accepted at the next meeting of the committee.

(13) Facilities and Rights for Representatives

It is agreed that representatives should have the following facilities and rights:

- time off to canvas the views of the membership and to prepare items for the agenda; to prepare for the consultative meetings as representatives; and to report back to members of the committee meeting;
- all time spent in meetings, preparing for meetings and reporting back to members about the consultative committee meeting, shall be treated and paid for as time worked;
- facilities such as a meeting room, telephone, photocopier and typing facilities should be made available as needed;
- all representatives and potential representatives should attend relevant training courses;
- any representative will not be discriminated against by the employer or treated unfairly because of being a member of the consultative committee or having an interest in the consultative committee.

(14) Responsibilities of Committee Members

All committee members have the following responsibilities:

- to attend all meetings to give serious consideration to all matters raised;
- to represent the views of their constituents.

(15) Confidentiality and Information Sharing

It is recognised that management will be unable to provide certain information, due to the fact that the information could compromise the competitiveness of the Company.

Management and unions agree to make every effort to make available as much information as possible for the effective resolution of problems and for the genuine participation of representatives in decisions. All committee members to sign a confidentiality agreement.

(16) Training

All members of the committee are entitled to extra training to ensure they are able to represent their members and fully participate in the consultative committee.

APPENDIX C

KEY PERFORMANCE INDICATORS

(1) The parties to this Agreement are committed to the development of Key Performance Indicators, the purpose of which is to:

(a) Create an awareness of productivity within the organisation by providing a focus on existing activities.

(b) Establish a profile of existing performance from which to plan for an improvement in performance.

(c) Provide a tool for the ongoing continuation of the productivity improvement process as part of the SQP program.

(d) Provide an ongoing mechanism for the monitoring, analysis and evaluation of changes introduced.

(e) Provide a fair and equitable way of measuring the contribution of employees to productivity improvement within the Company.

(2) Development of KPI's

KPI's will be developed as part of the SQP program. The SQP Consultative Committee or a subcommittee of the SQP Consultative Committee will be responsible for identifying key performance indicators which will be used to fund annual productivity payments. Further, this committee/subcommittee will have responsibility for the collecting of data, the monitoring of indicators and the ongoing review of the effectiveness of the key performance indicators.

The committee will consider a range of measures as part of this program and they will include but not be limited to such measures as a suggestion scheme, targets, reduction in wastage, reduction in lost time injuries, effective utilisation of labour.

Relocation of the dairy operation and the associated benefits of the relocation of the dairy to Peters (WA) Ltd Balcatta will be taken into account when savings are being identified to assist in the funding of KPI's for the 2nd year of the Agreement.

APPENDIX D—EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAM

Brownes Dairy Pty Ltd will operate an Equal Employment Opportunity and Affirmative Action program on the principle of recruitment and promotion by merit. This will involve giving people in the workplace the opportunity to compete equally for jobs and to have equal access to training and promotion at all levels, limited only by their skills, experience and qualifications.

(1) The Company is committed to an objective of equal opportunity in employment and affirmative action is the way to achieve it.

(2) The principles of Equal Opportunity and Affirmative Action (EEO for Women) will apply to all employment practices, including recruitment, promotion, acting appointments, transfers, training, staff development, conditions of employment and termination of employment.

(3) The Company is opposed to all forms of discrimination whether direct or indirect. Discrimination is taken to mean denying people equal treatment in employment on grounds which are not based on inherent job requirements.

(4) The Company believes that the requirements for any job must be carefully defined so that people are not excluded from consideration or disadvantaged by the application of irrelevant criteria.

(5) The Company is committed to taking positive steps by means of an Equal Employment Opportunity/Affirmative Action program to relieve the effects of possible past discrimination and to ensure that all current and future employees may have equal employment opportunities in keeping with the principle of appointment and advancement by merit.

(6) The Company has appointed an Equal Employment Opportunity/Affirmative Action Co-ordinator and an Equal Employment Opportunity/Affirmative Action Officer to ensure the implementation of this policy and to design and co-ordinate an Equal Employment Opportunity/Affirmative Action program.

(7) The Company undertakes to inform all employees and in particular supervisory staff, of the Equal Employment Opportunity/Affirmative Action policy and of the resources available to assist in its implementation.

(8) The Company will monitor and evaluate the success of this program on a regular basis and the program will be revised as and when necessary.

(9) The Company stresses that it regards the issue of Equal Employment Opportunity/Affirmative Action (EEO for Women) as an important procedure and expects all management and supervisory staff to be responsible for ensuring the successful implementation of this policy and of the Equal Employment Opportunity/Affirmative Action program.

(10) The Company will make every effort to resolve disputes and grievances related to Equal Employment Opportunity/Affirmative Action.

(11) The Company believes that Equal Employment Opportunity/Affirmative Action (EEO for Women) can be achieved with the support and co-operation of management, unions and employees.

APPENDIX E—MAINTENANCE FLEXIBILITY AGREEMENT

The purpose of this agreement is to ensure optimum productivity by effective utilisation of staff. This may require some changes to traditional working relationships and increase employee participation. In particular, this will be provided by greater flexibility between Maintenance and Production employees with respect to work which these staff may undertake. In all cases it is accepted that staff must have the appropriate skill and competency to perform any particular tasks.

A major aim of this agreement is that the fostering of a mutual trust in the shared management and accountability of the operation will provide for greater levels of business performance, job satisfaction and improved skills.

It is agreed that the parties will seek improved productivity through improved communications between Maintenance and Production staff in all areas including more detailed analysis of plant faults by production personnel to assist maintenance to rectify problems more expeditiously.

It is agreed that providing staff have the required skill that the following areas may be undertaken by either maintenance or production staff as appropriate:

2 litre plastic bottleline	Set up of machine and labeller
Coders	Set up and cleaning
All machines & operations	Operation by maintenance staff to test run for maintenance purposes

Other areas may be included from time to time following agreement by the respective parties.

APPENDIX F—PROCESS CONTROL OPERATORS

The terms and conditions applicable to Appendix F—Process Control Operators, are as set out in the Memorandum of Understanding between Brownes Dairy and the ALHMWU for and on behalf of the Process Control Operators, a signed copy of which is annexed hereto.

APPENDIX G—PARENTAL LEAVE

The following provisions shall apply to employees under this Agreement. References to award shall mean reference to this Agreement.

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

PART A

MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions

For the purpose of this subclause:

(a) "Employee" includes a part-time or seasonal employee but does not include an employee engaged upon casual work.

(b) "Paternity leave" means leave of the type provided for in Part B hereof whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked I accordance with this clause; or

(iii) any period of leave or absence authorised by the award.

(3) Eligibility for Maternity Leave

An employee who becomes pregnant, upon production to her employer of a certificate required by clause (4) 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.

Subject to Clauses (6) and (9) hereof, the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of up to six weeks compulsory leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds on such leave.

(4) At the time specified in Clause (5) hereof the employee must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in Clause (4) (a) hereof.

(b) An employee shall give not less than four weeks notice in writing to her employer of the date on which she proposes to commence maternity leave, stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in Clause (4) (b) above.

(c) An employer, by not less than 14 days notice in writing to the employee, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

(d) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(6) Transfer to a Safe Job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of Clause (1), (11), (12) and (13) hereof.

(7) Variation of Period of maternity Leave

(a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under clause (3) hereof:

(i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

(b) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Maternity Leave

(a) Maternity Leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminate other than by birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer, having regard to any medical advice produced by the employee. not exceeding four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(9) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(i) 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) 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

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate to paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under Clause (3) hereof.

(c) For the purposes of Clauses (10), (11) and (12) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to \a safe job pursuant to subclause (6) hereof, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this schedule does not exceed the period to which the employee is entitled under subclause (3) 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 then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

(11) Effect of Maternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(12) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(13) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (a) above, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (6) 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.

(c) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(14) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before 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.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

PART B

PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions

For the purposes of this subclause:

(a) "Employee" includes a part-time or seasonal employee but does not include an employee engaged upon casual work.

(b) "Maternity leave" means leave of the type provided by in Part A hereof (and includes special maternity leave) whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee or the employee's spouse under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(f) "continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this 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 award.

(3) Eligibility for Paternity leave

A male employee, upon production to the employer of a certificate required by subclause (5) 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:

(a) an unbroken period of up to one week at the time of confinement of his spouse;

(b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

An employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) hereof the employee must produce to the employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;

(b) in relation to any period to be taken under subclause (3)(b) above, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care-giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give to the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) above.

(b) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) above if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The employee shall immediately notify the employer of any change in the information provided pursuant to subclause (4) above.

(6) Variation of Period of Paternity Lave

(a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (3):

(i) the period of paternity leave provided by subclause (3)(b) hereof be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened.

(ii) the period may be further lengthened by agreement between the employer and the employee.

(b) The period of paternity leave taken under subclause (3)(b) 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.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subclause (3)(b) 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.

(8) Paternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under clause (3) 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.

(b) Paid sick leave or other paid authorised award absence (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of any employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(10) Termination of Employment

(a) An employee on paternity leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the grounds of his absence on paternity leave, but otherwise the right of an employer in relation to termination of employment are not hereby affected.

(11) Return to Work After paternity Leave

(a) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (3)(b) above.

(b) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) 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.

(12) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employer 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.

(d) Noting in this subclause shall be construed as requiring the employer to engage a replacement employee.

PART C

ADOPTION LEAVE

(1) Nature of Leave

Adoption leave is unpaid leave

(2) Definitions

For the purposes of this subclause:

(a) "Employee" includes a part-time or seasonal employee but does not include an employee engaged upon casual work.

(b) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

(c) "Relative adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(d) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(e) "Spouse" includes a de facto spouse.

(f) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this 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 award.

(3) Eligibility

An employee, upon production to the employer of a certificate required by subclause (4) 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:

(a) an unbroken period of up to three weeks at the time of the placement of the child;

(b) a further unbroken period of up to 52 weeks from the time of its placement in order to be the primary care giver of a child. The 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.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(4) Certification

Before taking adoption leave the employee must produce to the employer:

(a) (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(b) In relation to any period to be taken under subparagraphs hereof, a statutory declaration stating:

(i) the employee is seeking adoption leave to become the primary care-giver of the child;

(ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(5) Notice Requirements

(a) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

(b) An employee who commences employment with 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.

(c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but not later than fourteen 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 subclause (3)(a) above.

(d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under subclause (3)(b) above give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(e) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (c) and (d) above if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(6) Variation of Person of Adoption Leave

(a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (3) hereof:

(i) the period of adoption leave taken under subclause (3)(b) above may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

(b) The period of adoption leave taken under subclause (3)(b) above may with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Adoption Leave

(a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

(b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(8) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(9) Adoption leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (3) above an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(10) Effect of Adoption leave on Employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence or adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(11) Termination of Employment

(a) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(12) Return to Work after Adoption Leave

(a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(b) above.

(b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or, in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

(c) 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 such be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(13) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising 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.

(d) Nothing in this subclause shall be construed as requiring the employer to engage a replacement employee.

PART D

PART-TIME WORK

(1) Definitions

For the purposes of this subclause:

(a) "Male Employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

(b) "Female Employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

(c) "Spouse" includes a de facto spouse.

(d) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this 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.

(e) "Continuous Service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause; or

(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.

(2) Entitlement

With the agreement of the employer:

(a) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(b) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(c) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

(d) In relation to adoption a female employee may work pat-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(3) Return to Former Position

(a) An employee who has had at least 12 months continuous service with 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.

(b) Nothing in paragraph (a) above shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(4) Pro-Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with subclause (8) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(5) Part-time Work Agreement

Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:

(a) that the employee may work part-time;

(b) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(c) upon the classification applying to the work to be performed; and

(d) upon the period of part-time employment.

(e) The terms of this agreement may be varied by consent.

(f) 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.

(g) The terms of this agreement shall apply to part-time employment.

(6) Termination of Employment

(a) 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 right arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

(b) 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 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 employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(7) Extension of Hours of Work

An 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 subclause (8) hereof.

(8) Nature of Part-Time Work,

The work to be performed part-time need not b the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(9) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

(a) limiting the number of employees who may work part-time;

(b) establishing quotas as to the ratio of part-time to full-time employees;

(c) prescribing a minimum or maximum number of hours a part-time employee may work; or

(d) requiring consultation with, consent of or monitoring by a union;

(e) and such provisions do not apply to part-time work under this clause.

(10) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.

(b) A replacement employee may be employed part-time. Subject to this clause, subclauses (5), (6), (7), (9) and (12) hereof apply to the part-time employment of replacement employees.

(c) Before an employer engages a replacement employee under this paragraph, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of clause (1)(e) hereof.

(e) Nothing in this clause shall be construed as requiring the employer to engage a replacement employee.

(11) 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 the continuity of service or employment.

SIGNATORIES:

For and On Behalf of
Brownes Dairy Pty Ltd

.....*signed*..... .....*signed*.....6/3/97
Witness

For and On Behalf of
Australian Liquor Hospitality &
Miscellaneous Workers Union,
Miscellaneous Workers Division
WA Branch

.....*signed*..... .....*signed*.....28/2/97
H CREED Witness—R HO

CAVLEC ELECTRICAL ENGINEERING SERVICES PTY LTD ENTERPRISE BARGAINING AGREEMENT
No. AG 75 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cavlec Electrical Engineering Services Pty Ltd

and

Communications, Electrical, Electronic,
Energy, Information, Postal, Plumbing and
Allied Workers Union of Australia,
Engineering and Electrical Division, WA Branch

No. AG 75 of 1997.

28 April 1997.

Order.

HAVING heard Ms V. Paul as agent on behalf of the Applicant and Mr C. Young as agent 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 terms of the following schedule and lodged in the Commission on the 19th March, 1997 be registered as an industrial agreement and shall replace the Cavlec Electrical Engineering Services Pty Ltd Enterprise Bargaining Agreement No. AG 23 of 1995.

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

SCHEDULE

CAVLEC ELECTRICAL ENGINEERING SERVICES PTY LTD ENTERPRISE BARGAINING AGREEMENT

1.—TITLE

This Agreement will be known as the Cavlec Electrical Engineering Services Pty Ltd Enterprise Bargaining Agreement and will replace registered industrial agreement AG 23 of 1995.

2.—ARRANGEMENT

1 Title
2 Arrangement
3 Area and Scope
4 Parties Bound
5 Date and Period of Operation
6 Application of Agreement
7 No Extra Claims
8 Objectives of Agreement
9 Dispute Procedure
10 Consultative Processes
11 Training
12 Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13 Monitoring of Agreement
14 Wages
15 Date and Signatures

3.—AREA AND SCOPE

Subject to clause 6 below, this Agreement will apply to Cavlec Electrical Engineering Services Pty Ltd (ACN 009 229 734) (**Cavlec**), its employees who are members or eligible to be members of the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch (**Union**), employed in the classifications set out in Clause 14—Wages, and the Union and will operate within the State of Western Australia.

It is estimated that the number of employees who will be bound by this Agreement upon registration is 40.

4.—PARTIES BOUND

This Agreement is made between Cavlec and the Union.

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 will not apply.

(c) This Agreement will not apply to certain contracts entered into by Cavlec 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 Cavlec and the Union are a party to that specific project or site agreement, the specific project or site agreement will take precedence over this Agreement.

(e) Where a specific project or site agreement is applicable to work Cavlec are contracted to carry out, and Cavlec and the Union are not a party to that specific project or site agreement, it is agreed that the parties will discuss the application of this Agreement to that work.

(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 will 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 14—Wages.

(3) The parties agree that if, following a review of this Agreement by the parties and the Consultative Committee, agreement is reached that this Agreement places and continues to place Cavlec and its employees at a competitive disadvantage, and productivity and flexibility have not improved then Cavlec have the option of reverting to work under the Electrical Contracting Industry Award R22 of 1978 (**Award**).

(4) No part of this Agreement is to be used by the Union, Cavlec, 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 is to be otherwise used by the Union, Cavlec, or its employees as evidence or example before any industrial tribunal or any other contractor.

(6) Pursuant to this Agreement and its measures to achieve gains in productivity, efficiency and flexibility, Cavlec will provide the rates of pay prescribed in Clause 14—Wages which will be paid in lieu of the minimum weekly rate provided for in the Award.

(7) This Agreement will operate in conjunction with the Award. Where any inconsistency exists between this Agreement and the Award, this Agreement will take precedence to the extent of the inconsistency.

(8) The parties agree that registration of this agreement in the Western Australian Industrial Relations Commission will not prejudice either the Union or Cavlec's right to claim, pursue and achieve an award or enterprise bargaining agreement in the Australian Industrial Relations Commission.

7.—NO EXTRA CLAIMS

(1) The employees and the Union will not pursue any extra claims in relation to the Award, with the exception of future State Wage Decisions, for the life of this Agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future safety net adjustment will be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this Agreement. Future safety net adjustments will not increase the wage rates contained at Clause 14—Wages.

8.—OBJECTIVES OF AGREEMENT

(1) The parties acknowledge their commitment to the principles of enterprise bargaining.

(2) The parties agree that as a result of this Agreement, Cavlec 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 Cavlec's operations;

(b) encouraging Cavlec'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 safety and health 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 Cavlec and the Union on Cavlec's work sites.

(i) enhancing job satisfaction;

(j) improving Cavlec'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 Cavlec in relation to the Award or this Agreement.

10.—CONSULTATIVE PROCESSES

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this Agreement, are enhanced by genuine consultation between Cavlec and its employees.

(2) A Consultative Committee (the Committee) may be established within Cavlec. The composition and size of Committee will be determined by the parties.

(3) The Committee will initially be chaired by Cavlec's State Manager or nominee. A representative of the Union may attend meetings. A representative of the Electrical Contractors' Association of WA (**ECA**) and/or CCI may attend the meetings.

(4) The role of the Committee is to act as a forum for consultation, guidance and advice between Cavlec 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 Cavlec and its employees;

(f) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(5) The Consultative Committee is a consultative and advisory group and it is recognised by all parties that final and overall accountability for company performance rests with Cavlec.

(6) At the expiration of this agreement the Committee shall disband.

11.—TRAINING

(1) Cavlec 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 Cavlec at the forefront of the industry.

(2) The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of Cavlec, a commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(a) developing a more highly skilled and flexible workforce; and

(b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by Cavlec.

(3) It is agreed that a training programme be developed consistent with:

(a) the current and future skill needs of Cavlec;

(b) the size, structure and nature of Cavlec;

(c) the need to develop vocational skills relevant to Cavlec and the electrical contracting industry.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for Cavlec will be performed in accordance with this Agreement and with the Award as varied by this Agreement and, if applicable, in conjunction with 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 Cavlec and the majority of affected employee(s) Cavlec may reschedule ordinary working hours;

(ii) the spread of hours may be altered by agreement between Cavlec 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 will not unreasonably be withheld;

(iv) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of Cavlec in conjunction with the provisions in paragraph (1)(e) and (f) of Clause 11—Hours, of the Award;

(v) flexibility of rostering employees' days off.

(b) It is agreed that when Cavlec wish to reschedule an RDO, Cavlec will endeavour to provide reasonable notice to the employee(s). RDO's may be substituted by agreement in accordance with the Award, which agreement will not unreasonably be withheld.

(3) Maintenance of Workplace

All employees are committed to ensure their workplace is maintained in a clean and safe condition.

(4) Overtime

(a) Overtime will be worked in accordance with Clause 12—Overtime of the Award. In particular the employees agree to strictly adhere to sub-paragraphs (2)(f)(i) and (ii) of Clause 12—Overtime:

"*(2)(f)(i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.*

(2)(f)(ii) The union party to this award, or employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause."

(b) Overtime may be worked on an RDO weekend as required by Cavlec. Cavlec 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) Cavlec will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at Cavlec's discretion, provided that this will not disadvantage Cavlec in any way.

(d) In conjunction with the roster system Cavlec will select the employees required to work overtime according to the needs of Cavlec 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 Cavlec, 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 will be deemed to be the nearest Cavlec 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 will be no automatic reissue of footwear where an employee is placed on a new site.

(7) Uniforms and Clothing

(a) It is agreed that employees issued with Cavlec uniforms and clothing, in accordance with company policy as amended from time to time, will wear such items during all work hours and each employee will maintain his or her uniform and clothing in a respectable condition as approved by Cavlec.

(b) It is agreed that employees who have been issued with clothing will have such clothing replaced on a fair wear and tear basis. There will be no automatic reissue of clothing where an employee is placed on a new site.

(8) Care of Cavlec Property

(a) It is agreed that employees will treat all property, plant and equipment owned or hired by Cavlec with due care and respect to ensure replacement is kept to a minimum. All property, plant and equipment will be returned to the designated storage area each day.

(b) A tradesperson or apprentice will replace or pay for any tools supplied by the company if lost through his or 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) Company Vehicles

Where an employee is provided the use of a company vehicle to conduct company business that employee will ensure that:

(a) the vehicle is kept clean, free of rubbish and washed;

(b) the vehicle's oil and fuel requirements are regularly checked to maintain the vehicle in a ready-for-use condition; and

(c) any defects that come to the employee's attention are reported to Cavlec immediately.

(10) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of Cavlec's 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.

(11) Quality Management

It is agreed that employees will co-operate fully with the development and implementation of Cavlec's quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by Cavlec. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(12) Daily Labour Reports

It is agreed that employees will take an active role in the production reporting and production strategy meetings by punctually and correctly filling in Cavlec's daily labour reports.

(13) Co-operation Between Employees and Supervisors

(a) It is agreed that employees will assist in the management of efficiency and production of sites by advising the supervisory staff at the earliest available opportunity if:

(i) it is anticipated that a material shortfall may occur, and if a shortfall does occur;

(ii) faulty hand tools are on site;

(iii) production is likely to be delayed or is delayed by other trades;

(iv) work is not being installed in accordance with the specifications or with SAA Wiring Rules.

(b) Employees will take an active role to ensure that sufficient quantities and correct types of materials are available at the job site to maximise time at the workface.

(c) Employees will take an active role in tool box meetings to eliminate safety hazards.

(14) Use of Expertise and Duties

(a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate licence to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licenses when required to by Cavlec.

(b) Employees' duties will include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.

(c) The parties agree to use their best endeavours to avoid demarcation disputes.

(15) Qualified Personnel

Cavlec supervisory personnel and foremen may work on the tools for the purposes of demonstration and tuition on the job or extreme situations affecting safety on a site.

(16) Rest Period

(a) A rest period of 10 minutes will be allowed in accordance with the following:

(i) Subject to the provisions of this paragraph, a rest period of 10 minutes from the time of ceasing to the time of resumption of work will be allowed each morning.

(ii) The rest period will be counted as time off duty without deduction of pay and will be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by an employee during the rest period but the period of 10 minutes will 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 Cavlec.

(c) Smoking is not permitted in Cavlec offices, including site offices, toilet facilities, lunchrooms, motor vehicles and other Cavlec facilities.

(17) Unauthorised Absences

(a) Cavlec will:

(i) arrange an employee's ordinary hours of work which will average 38 hours per week; and

(ii) select the method of implementation of the 38 hour week.

(b) An employee agrees to present himself or herself for duty and remain on duty during the ordinary hours of work.

(c) Cavlec will be under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with:

(i) Award provisions; or

(ii) an instruction from Cavlec that the employee may leave site without loss of pay.

(18) Safety Disputes

(a) Where a Cavlec employee is affected by a safety dispute an employee will comply with Cavlec's 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 Cavlec's instructions agrees to forfeit wages for time not worked.

(19) Inclement Weather (Wet or Hot)

(a) Where a Cavlec employee is affected by inclement weather an employee agrees to comply with Cavlec's instructions to either:

(i) continue work when the area in which the employee is working is not affected by inclement weather; or

(ii) accept a transfer to work in an area of the site not affected by the inclement weather; or

(iii) accept a transfer from one site to another site not affected by inclement weather; or

(iv) leave the site without loss of pay.

(b) Where Cavlec requires an employee to traverse open ground Cavlec will provide the employee with protective clothing. Such clothing will remain the property of Cavlec and will be returned to Cavlec. Employees will take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

(c) An employee will not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.

(d) An employee who does not comply with Cavlec's instructions agrees to forfeit wages for time not worked.

(20) All Other Disputes

(a) Where a Cavlec employee is affected by any other dispute an employee agrees to comply with Cavlec's 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 Cavlec's instructions agrees to forfeit wages for time not worked.

(21) Movement of Material

It is agreed that employees will, where reasonably safe to do so, and in compliance with WorkSafe Western Australia's requirements, load and unload materials, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

(22) New Technology

It is agreed that employees will fully utilise all new technological advances implemented by Cavlec including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

(23) 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 and Regulations.

(24) 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 Cavlec 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) Cavlec 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.

(25)Tools

(a) Employees will supply, as a minimum, and maintain the tools listed or tools comparable to those listed in the Award. The employee agrees to maintain such tools in good working order at all times.

(b) Cavlec may from time to time request inspection of an employee's tools. If Cavlec are of the opinion that the employee's tools are not in good working order, Cavlec can instruct the employee to replace such tools. The employee agrees to abide by any Cavlec. instruction to replace tools.

(26) Commissioning Allowance

A tradesperson will not receive a commissioning allowance for miscellaneous pre-commissioning. A tradesperson will not receive a commissioning allowance unless that tradesperson is appointed by Cavlec to the position of a commissioning tradesperson for a defined period.

(27) Provision of Safety Personnel

In the commercial sector of Cavlec's operations, Cavlec will endeavour to provide appropriately trained safety personnel to attend on site where, as a result of a dispute, Cavlec's employees are unable to continue work due to the absence of appropriately trained safety personnel.

(28) Injured Workers Rehabilitation

Cavlec is actively involved in ensuring any injured employee is rehabilitated back into the workforce at the first

reasonable opportunity. To ensure this policy is maintained, employees who suffer an injury may be required to consult a medical practitioner nominated by Cavlec. This provision will not prevent an employee from consulting and being treated by his or her own personal medical practitioner in the first instance.

(29) Payment of Wages

Employees will be paid by electronic funds transfer or, where Cavlec and the employee agree, the employee may be paid by cash or cheque.

(30) Non Smoking Policy

(a) All company premises, site offices, site amenities and company vehicles are designated non smoking areas.

(b) All employees agree to abide by Cavlec's non smoking policy and not to smoke in all work areas and on all worksites where there is a no smoking policy in place. Employees are not to smoke in any non smoking area even during break time.

(c) Employees agree that they will not leave the job in order to smoke apart from during authorised breaks.

13.—MONITORING OF AGREEMENT

The parties to this Agreement will continually monitor the development of the Agreement and will review the effect of this Agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this Agreement places them at a disadvantage then the parties will reconvene to resolve the issue.

14.—WAGES

(1) The following weekly wage rates will apply from the first full pay period to commence on or after Cavlec, 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 of 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.

Note: These wage rates are based on 15% over 2 years (compounded) at 4 x 3.75% increases.

15.—DATE AND SIGNATURES

FOR AND ON BEHALF OF CAVLEC ELECTRICAL ENGINEERING SERVICES PTY LTD

S. Cavilli (Signed) (Signed)

....

SIGNED WITNESSED

Managing Director

.....

TITLE

11.03.97

.....

DATE

THE COMMON SEAL OF THE COMMUNICATIONS, ELECTRICAL, ELECTRONICS, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED WORKERS' UNION OF AUSTRALIA, ENGINEERING AND ELECTRICAL DIVISION, WA BRANCH was hereto affixed in the presence of:

P. Carter W. Game (Signed)

....

SIGNED WITNESSED

Organiser

..... Affix Seal

TITLE **COMMON SEAL**

18.3.97

.....

DATE

CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD EMPLOYEES WAGE AGREEMENT
No. AG 10 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Disabled Workers' Union of Western Australia

and

Cerebral Palsy Association of Western Australia Ltd

No. AG 10 of 1997.

COMMISSIONER C.B. PARKS.

8 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 10 OF 1997.

HAVING heard Mr G. Hocking (of Counsel) on behalf of the first named party and Mr P.G. Robertson on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement titled the Cerebral Palsy Association of Western Australia Ltd Employees Wage Agreement, filed in the Commission on 20 January 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This Agreement shall be known as THE CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD Employees Wage Agreement.

2.—SCOPE

This Agreement applies to persons with disabilities who are eligible for receipt of the Disability Support Pension and membership to the Disabled Workers Union of Western Australia ("the Union"), and who are employed by The Cerebral Palsy Association of Western Australia Ltd ("the employer") at any of the employer's premises.

3.—TERM

This Agreement shall be for a term of 3 years from the date hereof.

4.—WAGES

(1) An employee covered by this Agreement who works full time shall be paid in accordance with the minimum rates set out in Clause 5.

(2) The hourly rate for employees who work part time shall be calculated by dividing the appropriate weekly rate by 38.

(3) The rate of wage paid to an employee shall be in accordance with the appropriate wage level set out in Clause 5 as determined through performance appraisals administered by the employer.

(4) In consideration of the wage level to be applied the employer shall conduct a performance appraisal on every applicant/employee. The following appraisal schedule shall, as far as practicable, be followed:

(a) Within a period of not more than 12 weeks from commencement a wage assessment appraisal shall be carried out to determine the appropriate rate of pay.

(b) Upon successful completion of a 3 month probationary period from commencement the applicant shall have their ongoing employment contract confirmed.

(c) An appraisal shall be conducted 12 months following commencement.

(d) Thereafter an appraisal shall be conducted at least once each year within 4 weeks of the anniversary of the commencement.

(5) Nothing in this Agreement shall prevent the employer from offering increments between or above wage levels or to facilitate movement between or above wage levels in reward of performance.

(6) Notwithstanding this Agreement, where an employee's performance no longer meets the relevant wage criteria, whether as a result of significant deterioration in relation to the employee's disability or other cause(s), the employer shall be entitled to adjust the wage level in accordance with appraisal criteria following advice and discussion with the employee and the Union.

(7) In the event that an employee is dissatisfied with their wage determination, the employee may seek a review of the wage level.

(a) Such wage level review shall occur through the timely application of the employer's grievance procedures.

(b) In the event that the employee remains dissatisfied with their wage determination following the completion of the grievance procedure, the Union, at the request of the employee, may advocate on the employee's behalf to effect a resolution. In this respect, the Union shall be entitled to access to the employee's performance appraisal documentation.

(8) The parties to this Agreement acknowledge that the employer is a service provider seeking to meet the individual needs of employees subject to this Award through a "Service Employment Model"* and that such a model of service provision is contrary to a "Commercial Model of Employment"**. In consequence, it is recognised that "wages" paid will reflect the societal goals, inefficiencies and earnings of the service model rather than those of a "commercial model". Further, it is not the purpose of this Agreement to promote one position or employee at the expense of others.

5.—RATES OF WAGE

(1) The minimum rates of full time wages payable to employees covered by this Agreement shall be:

Level	Wage Rate
Employee—Wage Level 1	$57.00/week ($1.50/hour)
Employee—Wage Level 2	$60.80/week ($1.60/hour)
Employee—Wage Level 3	$64.60/week ($1.70/hour)
Employee—Wage Level 4	$74.10/week ($1.95/hour)
Employee—Wage Level 5	$83.60/week ($2.20/hour)

(a) This rates will be reviewed annually by the employer unless otherwise agreed by the employer and the Union.

(b) For the purpose of review, the Consumer Price Index (CPI) for Perth and Western Australia will be taken as a guide together with any other factors agreed by the parties.

(c) Such review is to be completed by 31 March each year for implementation on the first day of the first pay period commencing after I July of the same year.

(2) Where an employee, upon registration of this Agreement, is in receipt of an existing wage in excess of the relevant assessed wage level, such existing wage shall be maintained until such time as the relevant wage level reaches the actual rate paid, or the next higher wage level is achieved through appraisal. Nothing in this Clause however shall preclude the application of Clause se 6 in proper circumstances.

* "Service Employment Model"—Refers to a model of employment which is based on the employment goals and training needs of employees. Work is created for individuals and the commercial considerations of such work are secondary to the needs and employment of those persons subject to the Agreement. As this model is not based primarily on commercial consideration and decision making, earnings are restricted accordingly.

** "Commercial Model of Employment"—Refers to employment in commercial enterprises where the primary focus is on meeting the needs of the enterprise and the availability of jobs and the provision of training and support is in keeping with employer requirements relative to the profitability of the enterprise. The labourforce, and training of the labourforce, is a factor of production not the primary objective of the enterprise.

6.—DISPUTE SETTLEMENT PROCEDURES

Where a dispute concerning the operation of this agreement arises, the following steps shall be taken:

(1) Step 1

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the employee or employees concerned and where the employee(s) so requests(s), the Union workplace representative.

(2) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the appropriate senior representative of the employer, the employee or employees concerned and where the employee(s) so request(s), the Union workplace representative who shall attempt to settle the dispute.

(3) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the employer, the employee or the employees concerned and where the employee(s) so request(s), an official of the Union who shall attempt to settle the dispute.

(4) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

7.—NUMBER OF EMPLOYEES BOUND

The parties estimate that 50 employees will be bound by this agreement.

Signed in PERTH of this day of 1997

The Common Seal of

The Cerebral Palsy Association of Western Australia Ltd

was hereunto affixed by authority of the Board of Management in the presence of:

common seal affixed

(signed by Rosalie M Taylor)
Director

(signed by Ruth Shean)
Secretary

Signed on behalf of

DISABLED WORKERS UNION OF WA

(signed by R A Hughes)
President

(signed by G Cassidy)
Secretary

CITY OF WANNEROO FLEET MAINTENANCE UNIT CONSENT AGREEMENT 1996
No. AG 90 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

City of Wanneroo

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. AG 90 of 1997.

1 May 1997.

Order.

HAVING heard Mr D.M. Jones as agent for the Applicant and Mr G.C. Sturman as agent for the Respondent and by consent, the Commission, pursuant to the powers conferred upon 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 3rd day of April, 1997 entitled the City of Wanneroo Fleet Maintenance Unit Consent Agreement 1996 and subsequently amended on the 1st day of May, 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 City of Wanneroo Fleet Maintenance Unit Consent Agreement 1996.

2.—ARRANGEMENT

2.1. Title
2.2. Arrangement
2.3. Parties Bound
2.4. Operative Date and Renewal of Agreement
2.5. No Extra Claims
2.6. Hours of Work
2.7. Relationship to Parent Award
2.8. Aims of Agreement
2.9. Performance Standards and Measurements
2.10. Training
2.11. Consultative Committee
2.12. Occupational Health, Safety and Welfare
2.13. Settlement of Disputes
2.14. Work Practices for Productivity Improvements
2.15. State Standards
2.16. Wages.
2.17. Member Absence
2.18. Enterprise Model
2.19. Notification of Pending Change
2.20. Membership on the Contract Tendering Committee
2.21. Competitive Tendering
2.22. Family Leave
Signatories to Agreement.

3.—PARTIES BOUND

3.1. This Agreement shall apply to and be binding upon the employer, the City of Wanneroo, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers,—Western Australian Branch and approximately twenty (20) employees engaged in the Fleet Maintenance Unit of the City of Wanneroo who are, or eligible to be, members of the Union named herein.

4.—OPERATIVE DATE AND RENEWAL OF AGREEMENT

4.1. This Agreement shall take effect from the beginning of the first pay period to commence on or after 1 November 1996 with registration by the Western Australian Industrial Relations Commission following adoption by the City of Wanneroo and remain in force until 31 October 1998, or until replaced by another agreement.

4.2. It is agreed that six months before its expiry, prior to any initiatives being taken to replace this Agreement, discussions will commence between the parties to determine an appropriate course of action with respect to its renewal.

5.—NO EXTRA CLAIMS

5.1. The parties agree that they will not pursue any extra claims for the duration of this Agreement.

5.2. The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

6.—HOURS OF WORK

6.1. Start time can be varied at short notice to accommodate equipment availability problems and special situations.

6.1.1. The parties agree that an increase in productivity and a decrease in costs will be achieved by new shift arrangements whereby the operating hours of the Workshops are extended to range from 6.00 a.m. to 10.00 p.m., Monday to Friday inclusive. A shift allowance will be paid for those shifts outside the Metal Trades (General) Award No. 13 of 1965, normal spread of hours (6am to 6pm). Work staff involved in continuous rotating shifts will have their wages aggregated.

6.1.2. A lunch break of 30 minutes will be taken in line with the shift roster.

6.1.3. The parties acknowledge that a significant reduction in overtime will achieve an increase in productivity for the Workshops.

6.1.4. Such reduction will be achieved through improved Control and reporting systems, in addition to a three shift work roster supported by a commitment that work will be completed during ordinary hours.

6.2. Three-Shift System: With the opening of the new workshop it is envisaged that operational requirement will necessitate a shift system principally in respect to Waste Management vehicle repair and maintenance.

6.2.1. On Monday to Friday inclusive, work shall be carried out in respect to Shift 1 and 2 as follows—

Shift 1 6.00 a.m. to 3.00 p.m. 8.5 hours

Shift 2 8.30 a.m. to 5.30 p.m. 8.5 hours

Shift 3 will be determined by operational requirements typical of the following example—

Shift 3 1.30 p.m. to 10.00 p.m. 8.5 hours

6.3. Rostered Day Off—

6.3.1. To enable employees to have a rostered day off, a nine day fortnight shift must be worked.

6.3.2. Changes to this procedure must have the approval of the Workshop Supervisor.

6.3.3. The rostered day off will be taken on a rolling basis and will be to a maximum of two persons per day inclusive of apprentices.

6.3.4. Rostered days off will be taken only on shifts between 6.00am and 5.30pm. Staff involved in working the 1.30pm to 10.00pm shift throughout a full two week period will be permitted to carry the rostered day into the next pay period.

7.—RELATIONSHIP TO PARENT AWARD

7.1. This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award No. 13 of 1965 for employees covered by the Award.

7.2. Where there is any inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of such inconsistency.

8.—AIMS OF AGREEMENT

8.1. The aims of the Agreement are to provide for the introduction of new work practices which include the following provisions.

8.1.1. The implementation and maintenance of a new workplace culture through co-operation and change to promote a more harmonious and productive working environment, ensuring that vehicles, plant and equipment are available to operational sections when necessary.

8.1.2. The implementation of workplace policies by the introduction of more flexible working arrangements to improve efficiency, productivity and job satisfaction, as well as enhancing the objectives of the City of Wanneroo.

8.2. The parties are committed to achieving continued productivity improvement.

8.3. Upon signing this Agreement, the parties agree to continue negotiations in good faith and to determine methods of further improving productivity whilst maintaining a safe working environment within the Workshops.

9.—PERFORMANCE STANDARDS AND MEASUREMENTS

9.1. It is recognised by the parties that the following practices will assist in the achievement of productivity gains.

9.1.1. The parties agree to commit themselves to active participation in the training and development required to implement the Quality Assurance Programme.

9.1.2. Certification will be ISO9002 by Standards of Australia, details of which will advised as soon as they become available.

9.2. The following performance measures will be regularly monitored and reported on—

9.2.1. Feedback on production efficiency from Workshop Clients (customer satisfaction).

9.2.2. Errors regarding work rate.

9.2.3. Total output as compared to previous periods.

9.2.4. Reduced absenteeism and other lost time.

9.2.5. Turnaround time for vehicle service.

9.2.6. Idle time allocation.

9.2.7. Increased team work and flexibility.

9.2.8. Safety performance—reduction in lost time injuries.

9.2.9. Other productivity measures as determined in conjunction with the Consultative Committee.

9.3. Methods will be reviewed to introduce greater flexibility into existing shift arrangements—e.g. flexibility of meal breaks without penalty to the City.

9.4. At all times emphasis will be placed on the quality, productivity and efficiency of work output.

10.—TRAINING

Following proper consultation within the first twelve (12) months of the agreement, the employer will develop a training policy and programme consistent with the needs of the Council and the employee.

10.1. NOTE: Policy should also include "on the job training."

10.2. Any costs associated with standard fees for prescribed courses and text books incurred in connection with the undertaking of training approved by the employer, shall be paid by the employer.

10.3. Travel costs incurred by an employee undertaking training in accordance with this Clause which exceed those normally incurred in travelling to and from work, shall be reimbursed by Council.

10.4. Each employee must undertake a minimum of 36 hours structured training per year as a requirement of the introduction of the newly created classification structure for progression from class C10 to C5. In terms of the Metal Trades Award each 36 hour structured training is considered representative of the C10+5%+10% etc. per each year leading to C5.

10.5. In recognition of the long term benefits to Council and the employee, Council encourages all employees to attain a functional level of literacy. Council will assist employees undertaking literacy programmes in their own time.

10.6. If so instructed by the Workshop Supervisor, Fleet Maintenance Unit staff will give basic training to Driver/Operators on the identification of basic mechanical problems and minor operational adjustments.

11.—CONSULTATIVE COMMITTEE

11.1. A Consultative Committee, comprising two representatives of the City of Wanneroo and two elected representatives from the Fleet Maintenance Unit

11.2. Employee representatives shall be elected for a period of two years, or for the remaining time of the Agreement.

11.3. Where a vacancy occurs for an employee representative, and election shall be called to fill the vacancy for the remainder of this Agreement.

11.4. The Consultative Committee and the employees agree to continue working towards the intentions and objectives of this Agreement.

11.5. Renegotiation of the Agreement will commence six (6) months before its actual expiry date.

11.6. The Consultative Committee will meet on a quarterly basis, or whenever necessary if so required.

12.—OCCUPATIONAL HEALTH, SAFETY AND WELFARE

12.1. All workers agree to comply with Council's Occupational Health and Safety Standards. Introduction of UV radiation protection clothing shall be implemented in consultation with the Safety Representative and the Fleet Maintenance Consultative Committee to address such issues as heat stress.

12.2. The Western Australian Occupational Health, Safety and Welfare Act 1984, as amended from time to time, shall apply without limitation.

13.—SETTLEMENT OF DISPUTES

13.1. Union meetings when approved by the Chief Executive Officer may extend up to one hour of paid work time. When combined meetings are planned with other workers, the meeting will be at 3 pm (unless otherwise authorised by the CEO) and the Fleet Maintenance Unit can commence duty that day at 6am, for all staff on shift 2 start times. Shift 1 and 3 shall remain unchanged.

13.2. Any grievance, complaint, claim, or any matter likely to result in a dispute between Management and Fleet Maintenance Unit employees, shall be settled in accordance with the procedures set out herein.

13.3. Where the matter has been raised by the employee, or a group of employees, the following steps shall be observed.

13.4. The employee/s concerned shall discuss the matter with the immediate Supervisor, in the presence of the Shop Steward if so required.

13.5. If the matter cannot be resolved at this level, the Supervisor shall refer the matter to the Manager Infrastructure, Fleet and Building Maintenance or a nominated representative.

13.6. Manager Infrastructure, Fleet and Building Maintenance or nominated representative shall, if unable to resolve the matter within two days of it being so referred, shall refer the matter to the Director of Technical Services for resolution and the employees shall be advised accordingly.

13.7. Unless the parties agree to a longer period, the procedure outlined in this sub clause shall be undertaken in three working days or less.

13.8. While the foregoing procedures are being carried out, the Union and its members will ensure that work continues normally.

13.9. If the matter remains unresolved after compliance with the provisions contained herein, the employees or the Shop Steward shall notify the Union Secretary of the Western Australian Branch, or a nominee, in order to have an opportunity of discussing the matter with the Manager Human Resources, or a nominated representative.

13.10. If the matter is not resolved at this stage, the parties shall then jointly or individually refer the matter to the Western Australian Industrial Relations Commission for resolution.

13.11. At any time when the seriousness of the grievance dictates both parties reserve the right to refer the matter immediately to the Industrial Relations Commission for resolution.

14.—WORK PRACTICES FOR PRODUCTIVITY IMPROVEMENTS

14.1. The parties agree that long term productivity improvements are essential to achieve mutual objectives. Productivity itself must be assessed in the context of customer service, service delivery, a reduction in absenteeism and the establishment of best practice bench marking for each of the major functions carried out by the operational terms.

14.2. Bench marking (Productivity and Efficiency) groups will be established in order to examine measures for improving the productivity and efficiency of the relevant workplace. These groups will comprise elected representatives from the different sections of the operational areas and others as required, and the respective supervisors.

The Bench marking (Productivity and Efficiency) groups will be involved in—

14.2.1. Joint development of performance indicators for work groups. These performance indicators will include, but are not limited to, measures of quality, scrap, reliability, rework, over budget costs, safety, absenteeism, labour turnover, customer service, output, downtime, etc as well as any other relevant indicators deemed appropriate by the groups.

14.2.2. Determining benchmarks to be targeted in performance improvement programmes.

14.2.3. Reviewing best practices that exist externally to the organisation with a view to implementing these practices within the workplace where appropriate.

14.2.4. The parties to this Agreement will meet every four (4) months to review the progress reports prepared by the Bench marking Groups. In addition, if special circumstances arise, a meeting may be called by any party to this Agreement.

14.3. The parties agree to strict adherence of the following practices after their introduction.

14.3.1. There shall not be any restrictions or demarcation while Fleet Maintenance Unit staff carry out mechanical trades assistance duties.

14.3.2. Management may use casual or part-time employees whenever it is deemed necessary and the Consultative Committee will be advised of such decision.

14.4. Annual leave rosters will be designed to ensure continuous and effective operation is maintained and all applications for leave shall be approved by the Workshop Supervisor.

14.5. All staff shall be committed to the concept of "Customer Service" and this will be supported by staff training programmes.

14.5.1. The confirmation by the City of Wanneroo and its employees to the principle of service to its residents and ratepayers and to remunerate the employees for the increased productivity that will flow from their commitment to service.

14.5.2. Each employee will undertake a minimum of one training programme on customer service dealing with relationships within the work groups and external relationships (customers, ratepayers, members of the public).

14.6. Notice of any change to rosters must be given 48 hours prior to commencement of a shift, unless otherwise agreed by the parties concerned. Unless due to unforeseen circumstances any requirement for overtime working will be arranged no later than stop of work on the previous day.

14.7. The title of leading hand will no longer apply and those duties normally undertaken by this position absorbed into the newly formed classification structure.

14.8. The Workshops will be manned during all rest or meal breaks by mechanical tradespersons and this will be achieved by staggering rest and meal breaks.

14.9. Fleet Maintenance Unit staff are committed to multi-skilling support training programmes to ensure flexibility in the Workshop.

14.10. All staff agree to and support the fact that Management has the right to manage in the best interest of the City's operations—e.g. staff must follow rules, instructions, policies and procedures.

14.11. Fleet Maintenance Unit staff will be committed to the establishment of a Quality Assurance Programme to ISO9002.

14.12. Fleet Maintenance Unit staff agree to complete urgent tasks at the end of shifts if so required, to ensure the readiness of service vehicles for commencement of the next days operation.

14.13. The Fleet Maintenance Unit staff understand and agree that when a vacancy arises management will review the position and replacement need not be automatic.

15.—STATE STANDARDS

15.1. This Agreement shall not operate to cause any employee to suffer a reduction in ordinary time earnings, or to depart from standards of the Western Australian Industrial Relations Commission with regard to hours of work, annual leave with pay or long service leave with pay.

16.—WAGES

16.1. The rates prescribed hereunder are Productivity and Performance based as per the provisions of Clause 9 hereof and include all allowances and penalty rates, with the exception of overtime.

16.2. Mechanical Trades—In accordance with the Metals & Engineering Workers' Union Western Australian Branch award structure

The wage payments stated below include service pay, tool allowance and 17.5% leave loading.

WAGE GROUP	EFFECTIVE 1 NOVEMBER 1996	5% EFFECTIVE JANUARY 1997	5% EFFECTIVE JANUARY 1998
LEVEL C10	507.18	532.54	559.17
LEVEL C9	519.42	545.39	572.06
LEVEL C8	541.56	568.64	597.07
LEVEL C7	563.80	591.99	621.59
LEVEL C6	608.17	630.18	661.69
LEVEL C5	630.41	661.93	695.03

17.—MEMBER ABSENCE

17.1. In keeping with the formation of self managing semi-autonomous work groups, any employee who finds that he/she will be absent for work shall notify his/her Supervisor as soon as possible, preferably before the commencement of work. Employees shall be entitled to an aggregate of 4 days sick leave each year without needing to produce a medical certificate and thereafter will be required to produce a medical certificate indicating the reason for the absence.

17.2. It is noted that the employees currently average 7.08 days' sick leave per year and it is agreed that the team will aim for an average of five (5) days' sick leave per year.

17.3. In genuine circumstances, where the City has had no contact with the employee, i.e. the employee is too ill to notify of his/her absence by the second hour of operations, the Supervisor may call upon the employee's home to ascertain the reason for the absence and where necessary, offer assistance.

18.—ENTERPRISE MODEL

18.1. Following (acceptance, validation or endorsement) of the I R Commission, all employees covered by this agreement will receive a 5% per week salary increase followed by and subject to the conditions stated in Clause 9.1 to 9.4, a further 5% per week salary increase 12 months later.

18.2. In addition leave loading of 17.5% corresponding to the tiered step progression will also be annualised and absorbed in the fortnightly pay period.

19.—NOTIFICATION OF PENDING CHANGE

19.1. Given recent State and Federal Government statements of the need for Local Government authorities to implement competitive tendering the City of Wanneroo seeks to secure long term employment for all employees by undertaking bench marking, quality assurance and other efficiency and work practice measures to maintain a competitive service. The workforce will be involved in the costing and preparation of any tendering documentation.

20.—MEMBERSHIP ON THE CONTRACT TENDERING COMMITTEE

20.1. Parties at the City of Wanneroo recognise the need to provide city residents and service users with the most relevant and cost effective services available.

20.2. The Workplace representative will be required to have input into the appropriateness of the contract, the costings, the content of the contract and the final acceptance.

20.3. Where practicable, committee members will attend briefing sessions on contract tendering procedures and outcomes.

20.4. Management will continue to develop staff strategies and training programmes to ensure Council's own competitiveness in an open market place.

21.—COMPETITIVE TENDERING

21.1. In response to current Local Government policies and Federal Government funding cutback the parties recognise that competitive tendering is an increasingly prominent feature of Strategic Local Government Management. The parties acknowledge that competitive tendering will affect the way in which services are delivered to the community.

21.2. In order to maintain security of tenure the parties agree that work practices machinery and training must reflect community and private enterprise standards capable of allowing successful competitive "in house" tendering.

21.3. The Fleet Maintenance Unit will begin to actively participate in the competitive tendering process by developing strategies in staff development and best practices that will underpin the competitiveness in an open marketplace of Council's workforce to provide the most efficient and effective services to the ratepayers.

22.—FAMILY LEAVE

22.1. Use of Sick Leave—

22.2. An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use up to 38 hours (5 days) per year of their accrued sick leave entitlement, for absences to provide care and support for such persons when they are ill.

22.3. The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

22.4. The entitlement to use sick leave in accordance with this sub clause is subject to—

The employee being responsible for the care of the person concerned; and

the person concerned being either—

a member of the employee's immediate family; or

a member of the employee's household.

22.5. The term "immediate family" includes—

A spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as a husband or wife or that person on a bona fide domestic basis although not legally married to that person; and

A child or an adult child (including an adopted child, a step child or an ex nuptial child,) parent grandparent, grandchild or sibling of the employee or spouse of the employee.

22.6. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

Annual Leave

Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed to between them.

Access to annual leave, as prescribed in paragraph (c)(1) above, shall be exclusive of any shutdown period provided for elsewhere under this award.

Make-up Time—

An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of
the City of Wanneroo

L. De LaHunty (signed)
12.../3..../97.

Signed for and on behalf of
the Automotive, Food, Metals, Engineering
Printing and Kindred Industries Union of
Workers' Western Australian Branch

John Ferguson (signed)
18...../3..../97.

COMMON SEAL

ELTIN BODDINGTON GOLD MINE AGREEMENT 1997
No. AG 74 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eltin Surface Mining Pty Ltd

and

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

No. AG 74 of 1997.

Eltin Boddington Gold Mine Agreement 1997.

22 April 1997.

Order.

HAVING heard Mr R. Gifford on behalf of the Applicant and Mr M. Lourey 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 Eltin Boddington Gold Mine Agreement 1997 filed in the Commission on the 17th day of March 1997 and as subsequently amended by the parties be registered effective from 18th day of April 1997.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Eltin Boddington Gold Mine Agreement 1997.

2.—ARRANGEMENT

1 Title
2. Arrangement
3. Incidence and Parties Bound
4. Term of Agreement
5. Relationship to Parent Award
6. Object of Agreement
7. Principles of Agreement
8. Mine Committee
9. Shift work
10. Inclement Weather and Machinery Breakdown
11. Camp Board and Lodging
12. Accrued Sick Leave
13. Leisure Days
14. Employee Relations Matters
15. Payment
16. Wage rates
17. Review of Wage Rates
18. Classification Definitions
19. Supersession
20. Signatories to Agreement
Appendix A (Shift Roster)

3.—INCIDENCE AND PARTIES BOUND

This Agreement will apply to and be binding on Eltin Surface Mining Pty Ltd (the Company), the Australian Workers Union, Western Australian Branch, Industrial Union of Workers (the AWU) and the 100 persons who are employed by the Company at its Boddington Gold Mine open pit operations and who perform the work specified by this Agreement.

4.—TERM OF AGREEMENT

This Agreement will take effect on 18 April 1997 and will remain in force until 30 June 1998, or until the Company's operations cease at the Boddington Gold Mine, whichever is the sooner.

5.—RELATIONSHIP TO PARENT AWARD

This Agreement will be read in conjunction with the AWU Gold (Mining and Processing) Award 1993 (the Award) and where there is inconsistency between this Agreement and the Award, the provisions of this Agreement will prevail.

6.—OBJECT OF AGREEMENT

The object of this Agreement is to continually build workplace arrangements that enhance the efficiency of the Company's open pit mining operations at the Boddington Gold Mine.

To this end the parties agree on the need to:

(a) develop and maintain the most co-operative and harmonious working relationships possible;

(b) develop and maintain an environment that fosters a commitment to and common identity with the business and its performance;

(c) develop and maintain team structures that motivate and empower employees to achieve maximum control of the work processes; and

(d) maintain a workplace that ensures the health, safety and welfare of employees and the environment.

7.—PRINCIPLES OF AGREEMENT

The following principles will govern the relationship between the parties in managing the application of this Agreement.

(a) The parties acknowledge and accept the structures, responsibilities and accountabilities of each other.

(b) Honesty, mutual respect and a businesslike attitude will prevail at all times.

(c) There will be opportunity for participation by employees, through the appropriate structures, in all matters which affect them.

8.—MINE COMMITTEE

A Mine Committee representative of the parties bound will be formed to oversee the application of this Agreement. The parties are committed to the sharing of all relevant information required by the Committee to ensure its maximum effectiveness.

9.—SHIFT WORK

The hours of work for shift workers will be either 10, 11 or 12 hours per shift as dictated by operational requirements and will be in accordance with the roster set out in Appendix A of this Agreement.

Shift start times will be 6am and 6pm respectively for day shift and night shift, or any other times that may be agreed between the parties from time to time.

Shift workers will be allowed 30 minutes for crib which will be counted as time worked and will be as nearly as practicable to the middle of the shift, but dependent upon the operational requirements from day to day. There will be additional breaks counted as time worked totalling 30 minutes in a 24 hour period to be taken in no more than 3 lots. The Mine Committee will allocate the appropriate breaks to day shift and night shift.

Where shifts meet back to back, employees will be at the muster area 10 minutes prior to the designated shift start time in order to effect a running changeover of personnel at the working machinery (hot seat change). Hot seat changes must be completed with the offgoing shift returned to the muster area no later than 10 minutes after the designated shift finish time. Where shift changes are enacted in accordance with this provision, no additional payment will apply. In cases where offgoing shift personnel are returned to the muster area later than 10 minutes after the designated shift finish time, overtime rates will apply from the hour.

Employees may swap shifts to meet personal needs and where these arrangements are agreed in writing by the respective employees and authorised by supervision, the Company will transfer payment between employees as appropriate.

10.—INCLEMENT WEATHER AND MACHINERY BREAKDOWN

In cases where work is disrupted due to inclement weather or machinery breakdown, the Company will endeavour to provide alternate work within the employees competence. Where this is not possible, individual employees may agree with the Company to take unpaid time off, provided that an employee who elects to remain at the workplace will not have pay deducted for the rostered hours of the day or shift.

11.—CAMP BOARD AND LODGING

Camp board and lodging charges will be reimbursed to employees following 12 months continuous service with the Company and at 12 monthly intervals thereafter. Pro-rata reimbursement will be made to employees terminating after 12 months service.

12.—ACCRUED SICK LEAVE

Employees whose employment terminates with the Company will have all unused accumulated sick leave paid out at the rate of pay applicable at the termination date.

13.—LEISURE DAYS

Clause 13 (Leisure Days) of the Award will not apply to employees of the Company who are bound by this Agreement.

14.—EMPLOYEE RELATIONS MATTERS

(a) **Grievance Procedure**

The parties are committed to the satisfactory and timely resolution of issues by those most directly involved, having regard to the object and principles of this Agreement.

An issue includes any question, dispute or difficulty arising out of this agreement.

Any issue will, in the first instance, be raised by an employee(s) with the most appropriate Company representative. If requested, assistance will be provided by the relevant AWU or Company structure as appropriate.

Should the issue remain unresolved following involvement of an official of the AWU and the appropriate Company industrial relations representative and within a sensible time frame, it will be referred to the Western Australian Industrial Relations Commission.

During this resolution process, work will continue normally and the status quo will prevail.

(b) **Shop Stewards**

Accredited AWU Shop Stewards will be afforded reasonable time without loss of pay to attend to site related industrial matters.

(c) **Shop Steward Training**

Accredited AWU Shop Stewards will be granted up to 3 days paid leave per year to attend training courses nominated by the AWU. The granting of such leave will be subject to operational requirements, but will not be unreasonably withheld.

15.—PAYMENT

Employees will be paid fortnightly by electronic transfer directly into an account at a recognised financial institution nominated by the employee.

16.—WAGE RATES

(a) These weekly rates will apply to employees bound by this Agreement and are in lieu of those prescribed by Clause 16(2)(a), 16(2)(c), 16(3) and 17(l) of the Award.

Mine Employee Grade 1	498.40 per week	(12.46 per hour)
Mine Employee Grade 2	543.60 per week	(13.59 per hour)
Mine Employee Grade 3	554.80 per week	(13.87 per hour)
Mine Employee Grade 4	570.40 per week	(14.26 per hour)
Mine Employee Grade 5	617.20 per week	(15.43 per hour)

The rates have been calculated by increasing the equivalent former weekly rate by 6% and, having regard to weekend, public holiday and over time penalties applying to the roster when 12 hour shifts are worked, rolling in the flat rate allowances of 90 cents per hour, $15.60 per shift and an amount equivalent to 12 leisure days, so as to provide one all purpose weekly rate.

The parties agree that an operational requirement for 10 hour shifts is unlikely during the term of the Agreement. However, should this occur, new weekly rates will be calculated by rolling in the flat rate allowance as they apply proportionally to 10 hour shifts. These new rates would only apply to time worked on 10 hour shifts.

(b) Allowances

A mine services employee employed to perform the function of tyre fitter and who is experienced in the duties shall receive an allowance of $25 per week.

A non-production employee who is required to perform the function of leading hand and who is experienced in the role of leading hand shall receive an allowance of $25 per week.

17.—REVIEW OF WAGE RATES

During the term of this Agreement, the wage rates specified herein will be varied as further mining efficiencies are identified, costed and implemented in accordance with the provisions of this Agreement.

18.—CLASSIFICATION DEFINITIONS

1. **Mine Employee Grade 1** means an employee engaged as a labourer, spotter, sampler or mine services employee.

2. **Mine Employee Grade 2** means a mine services employee with more than 3 months service, an ore truck driver, or an employee training on mobile plant.

3. **Mine Employee Grade 3** means an experienced mine services employee, an ore truck driver who operates either loaders (Cat. 988 equivalent or under), tracked dozers, graders or water carts, or an employee engaged as a driller.

4. **Mine Employee Grade 4** means a mine services employee performing a leading hand function or an ore truck driver who operates either large rubber tyred dozers (T690 equivalent), large loaders (Cat. 992 equivalent), or any loader on mill feed.

5. **Mine Employee Grade 5** means a production shift employee who operates excavators with the ability to trim batters, or who performs the leading hand function.

Pursuant to Clause 18. (Employee Relieving in a Higher Capacity) of the Award, the parties agree that the correct mix of employees permanently in each classification is the most desirable method of meeting all operational requirements. It is acknowledged that unforeseen circumstances may occur that require the "daily upgrade" system to be utilised. In these circumstances employees who perform work of a higher classification for all or part of a shift will be paid the higher rate for all of the shift.

19.—SUPERSESSION

This Agreement will replace the Eltin Boddington Gold Mine Agreement 1994 which, upon ratification of this Agreement by the Western Australian Industrial Relations Commission, will cease to have effect.

20.—SIGNATORIES TO AGREEMENT

SIGNED ON BEHALF OF ELTIN SURFACE MINING PTY LTD

P. Trebilco DATE 7/3/1997

SIGNED ON BEHALF OF THE AUSTRALIAN WORKERS' UNION

WESTERN AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS

P. Zorzi DATE 7/3/1997

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE	A B C	DATE	A B C	DATE
Wednesday	D X N	1/01/97	X N D	26/02/97	N D X	23/04/97	N D X	18/06/97
Thursday	D X N	2/01/97	X N D	27/02/97	X N D	24/04/97	N D X	19/06/97
Friday	D X N	3/01/97	D X N	28/02/97	X N D	25/04/97	N D X	20/06/97
Saturday	N D X	4/01/97	D X N	1/03/97	X N D	26/04/97	N D X	21/06/97
Sunday	N D X	5/01/97	D X N	2/03/97	X N D	27/04/97	N D X	22/06/97
Monday	N D X	6/01/97	D X N	3/03/97	X N D	28/04/97	X N D	23/06/97
Tuesday	N D X	7/01/97	D X N	4/03/97	D X N	29/04/97	X N D	24/06/97
Wednesday	N D X	8/01/97	N D X	5/03/97	D X N	30/04/97	X N D	25/06/97
Thursday	X N D	9/01/97	N D X	6/03/97	D X N	1/05/97	X N D	26/06/97
Friday	X N D	10/01/97	N D X	7/03/97	D X N	2/05/97	X N D	27/06/97
Saturday	X N D	11/01/97	N D X	8/03/97	D X N	3/05/97	D X N	28/06/97
Sunday	X N D	12/01/97	N D X	9/03/97	N D X	4/05/97	D X N	29/06/97
Monday	X N D	13/01/97	X N D	10/03/97	N D X	5/05/97	D X N	30/06/97
Tuesday	D X N	14/01/97	X N D	11/03/97	N D X	6/05/97	D X N	1/07/97
Wednesday	D X N	15/01/97	X N D	12/03/97	N D X	7/05/97	D X N	2/07/97
Thursday	D X N	16/01/97	X N D	13/03/97	N D X	8/05/97	N D X	3/07/97
Friday	D X N	17/01/97	X N D	14/03/97	X N D	9/05/97	N D X	4/07/97
Saturday	D X N	18/01/97	D X N	15/03/97	X N D	10/05/97	N D X	5/07/97
Sunday	N D X	19/01/97	D X N	16/03/97	X N D	11/05/97	N D X	6/07/97
Monday	N D X	20/01/97	D X N	17/03/97	X N D	12/05/97	N D X	7/07/97
Tuesday	N D X	21/01/97	D X N	18/03/97	X N D	13/05/97	X N D	8/07/97
Wednesday	N D X	22/01/97	D X N	19/03/97	D X N	14/05/97	X N D	9/07/97
Thursday	N D X	23/01/97	N D X	20/03/97	D X N	15/05/97	X N D	10/07/97
Friday	X N D	24/01/97	N D X	21/03/97	D X N	16/05/97	X N D	11/07/97
Saturday	X N D	25/01/97	N D X	22/03/97	D X N	17/05/97	X N D	12/07/97
Sunday	X N D	26/01/97	N D X	23/03/97	D X N	18/05/97	D X N	13/07/97
Monday	X N D	27/01/97	N D X	24/03/97	N D X	19/05/97	D X N	14/07/97
Tuesday	X N D	28/01/97	X N D	25/03/97	N D X	20/05/97	D X N	15/07/97
Wednesday	D X N	29/01/97	X N D	26/03/97	N D X	21/05/97	D X N	16/07/97
Thursday	D X N	30/01/97	X N D	27/03/97	N D X	22/05/97	D X N	17/07/97
Friday	D X N	31/01/97	X N D	28/03/97	N D X	23/05/97	N D X	18/07/97
Saturday	D X N	1/02/97	X N D	29/03/97	X N D	24/05/97	N D X	19/07/97
Sunday	D X N	2/02/97	D X N	30/03/97	X N D	25/05/97	N D X	20/07/97
Monday	N D X	3/02/97	D X N	31/03/97	X N D	26/05/97	N D X	21/07/97
Tuesday	N D X	4/02/97	D X N	1/04/97	X N D	27/05/97	N D X	22/07/97
Wednesday	N D X	5/02/97	D X N	2/04/97	X N D	28/05/97	X N D	23/07/97
Thursday	N D X	6/02/97	D X N	3/04/97	D X N	29/05/97	X N D	24/07/97
Friday	N D X	7/02/97	N D X	4/04/97	D X N	30/05/97	X N D	25/07/97
Saturday	X N D	8/02/97	N D X	5/04/97	D X N	31/05/97	X N D	26/07/97
Sunday	X N D	9/02/97	N D X	6/04/97	D X N	1/06/97	X N D	27/07/97
Monday	X N D	10/02/97	N D X	7/04/97	D X N	2/06/97	D X N	28/07/97
Tuesday	X N D	11/02/97	N D X	8/04/97	N D X	3/06/97	D X N	29/07/97
Wednesday	X N D	12/02/97	X N D	9/04/97	N D X	4/06/97	D X N	30/07/97
Thursday	D X N	13/02/97	X N D	10/04/97	N D X	5/06/97	D X N	31/07/97
Friday	D X N	14/02/97	X N D	11/04/97	N D X	6/06/97	D X N	1/08/97
Saturday	D X N	15/02/97	X N D	12/04/97	N D X	7/06/97	N D X	2/08/97
Sunday	D X N	16/02/97	X N D	13/04/97	X N D	8/06/97	N D X	3/08/97
Monday	D X N	17/02/97	D X N	14/04/97	X N D	9/06/97	N D X	4/08/97
Tuesday	N D X	18/02/97	D X N	15/04/97	X N D	10/06/97	N D X	5/08/97
Wednesday	N D X	19/02/97	D X N	16/04/97	X N D	11/06/97	N D X	6/08/97
Thursday	N D X	20/02/97	D X N	17/04/97	X N D	12/06/97	X N D	7/08/97
Friday	N D X	21/02/97	D X N	18/04/97	D X N	13/06/97	X N D	8/08/97
Saturday	N D X	22/02/97	N D X	19/04/97	D X N	14/06/97	X N D	9/08/97
Sunday	X N D	23/02/97	N D X	20/04/97	D X N	15/06/97	X N D	10/08/97
Monday	X N D	24/02/97	N D X	21/04/97	D X N	16/06/97	X N D	11/08/97
Tuesday	X N D	25/02/97	N D X	22/04/97	D X N	17/06/97	D X N	12/08/97

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE	A B C	DATE	A B C	DATE
Wednesday	D X N	13/08/97	X N D	8/10/97	N D X	3/12/97	D X N	28/01/98
Thursday	D X N	14/08/97	X N D	9/10/97	N D X	4/12/97	N D X	29/01/98
Friday	D X N	15/08/97	X N D	10/10/97	X N D	5/12/97	N D X	30/01/98
Saturday	D X N	16/08/97	D X N	11/10/97	X N D	6/12/97	N D X	31/01/98
Sunday	N D X	17/08/97	D X N	12/10/97	X N D	7/12/97	N D X	1/02/98
Monday	N D X	18/08/97	D X N	13/10/97	X N D	8/12/97	N D X	2/02/98
Tuesday	N D X	19/08/97	D X N	14/10/97	X N D	9/12/97	X N D	3/02/98
Wednesday	N D X	20/08/97	D X N	15/10/97	D X N	10/12/97	X N D	4/02/98
Thursday	N D X	21/08/97	N D X	16/10/97	D X N	11/12/97	X N D	5/02/98
Friday	X N D	22/08/97	N D X	17/10/97	D X N	12/12/97	X N D	6/02/98
Saturday	X N D	23/08/97	N D X	18/10/97	D X N	13/12/97	X N D	7/02/98
Sunday	X N D	24/08/97	N D X	19/10/97	D X N	14/12/97	D X N	8/02/98
Monday	X N D	25/08/97	N D X	20/10/97	N D X	15/12/97	D X N	9/02/98
Tuesday	X N D	26/08/97	X N D	21/10/97	N D X	16/12/97	D X N	10/02/98
Wednesday	D X N	27/08/97	X N D	22/10/97	N D X	17/12/97	D X N	11/02/98
Thursday	D X N	28/08/97	X N D	23/10/97	N D X	18/12/97	D X N	12/02/98
Friday	D X N	29/08/97	X N D	24/10/97	N D X	19/12/97	N D X	13/02/98
Saturday	D X N	30/08/97	X N D	25/10/97	X N D	20/12197	N D X	14/02/98
Sunday	D X N	31/08/97	D X N	26/10/97	X N D	21/12/97	N D X	15/02/98
Monday	N D X	1/09/97	D X N	27/10/97	X N D	22/12/97	N D X	16/02/98
Tuesday	N D X	2/09/97	D X N	28/10/97	X N D	23/12/97	N D X	17/02/98
Wednesday	N D X	3/09/97	D X N	29/10/97	X N D	24/12/97	X N D	18/02/98
Thursday	N D X	4/09/97	D X N	30/10/97	D X N	25/12/97	X N D	19/02/98
Friday	N D X	5/09/97	N D X	31/10/97	D X N	26/12/97	X N D	20/02/98
Saturday	X N D	6/09/97	N D X	1/11/97	D X N	27/12/97	X N D	21/02/98
Sunday	X N D	7/09/97	N D X	2/11/97	D X N	28/12/97	X N D	22/02/98
Monday	X N D	8/09/97	N D X	3/11/97	D X N	29/12/97	D X N	23/02/98
Tuesday	X N D	9/09/97	N D X	4/11/97	N D X	30/12/97	D X N	24/02/98
Wednesday	X N D	10/09/97	X N D	5/11/97	N D X	31/12/97	D X N	25/02/98
Thursday	D X N	11/09/97	X N D	6/11/97	N D X	1/01/98	D X N	26/02/98
Friday	D X N	12/09/97	X N D	7/11/97	N D X	2/01/98	D X N	27/02/98
Saturday	D X N	13/09/97	X N D	8/11/97	N D X	3/01/98	N D X	28/02/98
Sunday	D X N	14/09/97	X N D	9/11/97	X N D	4/01/98	N D X	1/03/98
Monday	D X N	15/09/97	D X N	10/11/97	X N D	5/01/98	N D X	2/03/98
Tuesday	N D X	16/09/97	D X N	11/11/97	X N D	6/01/98	N D X	3/03/98
Wednesday	N D X	17/09/97	D X N	12/11/97	X N D	7/01/98	N D X	4/03/98
Thursday	N D X	18/09/97	D X N	13/11/97	X N D	8/01/98	X N D	5/03/98
Friday	N D X	19/09/97	D X N	14/11/97	D X N	9/01/98	X N D	6/03/98
Saturday	N D X	20/09/97	N D X	15/11/97	D X N	10/01/98	X N D	7/03/98
Sunday	X N D	21/09/97	N D X	16/11/97	D X N	11/01/98	X N D	8/03/98
Monday	X N D	22/09/97	N D X	17/11/97	D X N	12/01/98	X N D	9/03/98
Tuesday	X N D	23/09/97	N D X	18/11/97	D X N	13/01/98	D X N	10/03/98
Wednesday	X N D	24/09/97	N D X	19/11/97	N D X	14/01/98	D X N	11/03/98
Thursday	X N D	25/09/97	X N D	20/11/97	N D X	15/01/98	D X N	12/03/98
Friday	D X N	26/09/97	X N D	21/11/97	N D X	16/01/98	D X N	13/03/98
Saturday	D X N	27/09/97	X N D	22/11/97	N D X	17/01/98	D X N	14/03/98
Sunday	D X N	28/09/97	X N D	23/11/97	N D X	18/01/98	N D X	15/03/98
Monday	D X N	29/09/97	X N D	24/11/97	X N D	19/01/98	N D X	16/03/98
Tuesday	D X N	30/09/97	D X N	25/11/97	X N D	20/01/98	N D X	17/03/98
Wednesday	N D X	1/10/97	D X N	26/11/97	X N D	21/01/98	N D X	18/03/98
Thursday	N D X	2/10/97	D X N	27/11/97	X N D	22/01/98	N D X	19/03/98
Friday	N D X	3/10/97	D X N	28/11/97	X N D	23/01/98	X N D	20/03/98
Saturday	N D X	4/10/97	D X N	29/11/97	D X N	24/01/98	X N D	21/03/98
Sunday	N D X	5/10/97	N D X	30/11/97	D X N	25/01/98	X N D	22/03/98
Monday	X N D	6/10/97	N D X	1/12/97	D X N	26/01/98	X N D	23/03/98
Tuesday	X N D	7/10/97	N D X	2/12/97	D X N	27/01/98	X N D	24/03/98

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE
Wednesday	D X N	25/03/98	X N D	20/05/98
Thursday	D X N	26/03/98	X N D	21/05/98
Friday	D X N	27/03/98	X N D	22/05/98
Saturday	D X N	28/03/98	X N D	23/05/98
Sunday	D X N	29/03/98	D X N	24/05/98
Monday	N D X	30/03/98	D X N	25/05/98
Tuesday	N D X	31/03/98	D X N	26/05/98
Wednesday	N D X	1/04/98	D X N	27/05/98
Thursday	N D X	2/04/98	D X N	28/05/98
Friday	N D X	3/04/98	N D X	29/05/98
Saturday	X N D	4/04/98	N D X	30/05/98
Sunday	X N D	5/04/98	N D X	31/05/98
Monday	X N D	6/04/98	N D X	1/06/98
Tuesday	X N D	7/04/98	N D X	2/06/98
Wednesday	X N D	8/04/98	X N D	3/06/98
Thursday	D X N	9/04/98	X N D	4/06/98
Friday	D X N	10/04/98	X N D	5/06/98
Saturday	D X N	11/04/98	X N D	6/06/98
Sunday	D X N	12/04/98	X N D	7/06/98
Monday	D X N	13/04/98	D X N	8/06/98
Tuesday	N D X	14/04/98	D X N	9/06/98
Wednesday	N D X	15/04/98	D X N	10/06/98
Thursday	N D X	16/04/98	D X N	11/06/98
Friday	N D X	17/04/98	D X N	12/06/98
Saturday	N D X	18/04/98	N D X	13/06/98
Sunday	X N D	19/04/98	N D X	14/06/98
Monday	X N D	20/04/98	N D X	15/06/98
Tuesday	X N D	21/04/98	N D X	16/06/98
Wednesday	X N D	22/04/98	N D X	17/06/98
Thursday	X N D	23/04/98	X N D	18/06/98
Friday	D X N	24/04/98	X N D	19/06/98
Saturday	D X N	25/04/98	X N D	20/06/98
Sunday	D X N	26/04/98	X N D	21/06/98
Monday	D X N	27/04/98	X N D	22/06/98
Tuesday	D X N	28/04/98	D X N	23/06/98
Wednesday	N D X	29/04/98	D X N	24/06/98
Thursday	N D X	30/04/98	D X N	25/06/98
Friday	N D X	1/05/98	D X N	26/06/98
Saturday	N D X	2/05/98	D X N	27/06/98
Sunday	N D X	3/05/98	N D X	28/06/98
Monday	X N D	4/05/98	N D X	29/06/98
Tuesday	X N D	5/05/98	N D X	30/06/98
Wednesday	X N D	6/05/98		
Thursday	X N D	7/05/98		
Friday	X N D	8/05/98		
Saturday	D X N	9/05/98		
Sunday	D X N	10/05/98		
Monday	D X N	11/05/98		
Tuesday	D X N	12/05/98		
Wednesday	D X N	13/05/98		
Thursday	N D X	14/05/98		
Friday	N D X	15/05/98		
Saturday	N D X	16/05/98		
Sunday	N D X	17/05/98		
Monday	N D X	18/05/98		
Tuesday	X N D	19/05/98		

ELTIN HEDGES GOLD MINE AGREEMENT 1997
No. AG 73 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eltin Surface Mining Pty Ltd

and

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

No. AG 73 of 1997.

Eltin Hedges Gold Mine Agreement 1997.

22 April 1997.

Order.

HAVING heard Mr R. Gifford on behalf of the Applicant and Mr M. Lourey 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 Eltin Hedges Gold Mine Agreement 1997 filed in the Commission on the 17th day of March 1997 and as subsequently amended by the parties be registered effective from the 18th day of April 1997.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Eltin Hedges Gold Mine Agreement 1997.

2.—ARRANGEMENT

1 Title
2. Arrangement
3. Incidence and Parties Bound
4. Term of Agreement
5. Relationship to Parent Award
6. Object of Agreement
7. Principles of Agreement
8. Mine Committee
9. Shift work
10. Inclement Weather and Machinery Breakdown
11. Camp Board and Lodging
12. Accrued Sick Leave
13. Leisure Days
14. Employee Relations Matters
15. Payment
16. Wage rates
17. Review of Wage Rates
18. Classification Definitions
19. Supersession
20. Signatories to Agreement
Appendix A (Shift Roster)

3.—INCIDENCE AND PARTIES BOUND

This Agreement will apply to and be binding on Eltin Surface Mining Pty Ltd (the Company), the Australian Workers Union, Western Australian Branch, Industrial Union of Workers (the AWU) and the 40 persons who are employed by the Company at its Hedges Gold Mine open pit operations and who perform the work specified by this Agreement.

4.—TERM OF AGREEMENT

This Agreement will take effect on 18 April 1997 and will remain in force until 30 June 1998, or until the Company's operations cease at the Hedges Gold which ever is the sooner.

5.—RELATIONSHIP TO PARENT AWARD

This Agreement will be read in conjunction with the AWU Gold (Mining and Processing) Award 1993 (the Award) and where there is inconsistency between this Agreement and the Award, the provisions of this Agreement will prevail.

6.—OBJECT OF AGREEMENT

The object of this Agreement is to continually build workplace arrangements that enhance the efficiency of the Company's open pit mining operations at the Hedges Gold Mine.

To this end the parties agree on the need to:

(a) develop and maintain the most co-operative and harmonious working relationships possible;

(b) develop and maintain an environment that fosters a commitment to and common identity with the business and its performance;

(c) develop and maintain team structures that motivate and empower employees to achieve maximum control of the work processes; and

(d) maintain a workplace that ensures the health, safety and welfare of employees and the environment.

7.—PRINCIPLES OF AGREEMENT

The following principles will govern the relationship between the parties in managing the application of this Agreement.

(a) The parties acknowledge and accept the structures, responsibilities and accountabilities of each other.

(b) Honesty, mutual respect and a businesslike attitude will prevail at all times.

(c) There will be opportunity for participation by employees, through the appropriate structures, in all matters which affect them.

8.—MINE COMMITTEE

A Mine Committee representative of the parties bound will be formed to oversee the application of this Agreement. The parties are committed to the sharing of all relevant information required by the Committee to ensure its maximum effectiveness.

9.—SHIFT WORK

The hours of work for shift workers will be either 10, 11 or 12 hours per shift as dictated by operational requirements and will be in accordance with the roster set out in Appendix A of this Agreement.

Shift start times will be 6am and 6pm respectively for day shift and night shift, or any other times that may be agreed between the parties from time to time.

Shift workers will be allowed 30 minutes for crib which will be counted as time worked and will be as nearly as practicable to the middle of the shift, but dependent upon the operational requirements from day to day. There will be additional breaks counted as time worked totalling 30 minutes in a 24 hour period to be taken in no more than 3 lots. The Mine Committee will allocate the appropriate breaks to day shift and night shift.

Where shifts meet back to back, employees will be at the muster area 10 minutes prior to the designated shift start time in order to effect a running changeover of personnel at the working machinery (hot seat change). Hot seat changes must be completed with the offgoing shift returned to the muster area no later than 10 minutes after the designated shift finish time. Where shift changes are enacted in accordance with this provision, no additional payment will apply. In cases where offgoing shift personnel are returned to the muster area later than 10 minutes after the designated shift finish time, overtime rates will apply from the hour.

Employees may swap shifts to meet personal needs and where these arrangements are agreed in writing by the respective employees and authorised by supervision, the Company will transfer payment between employees as appropriate.

10.—INCLEMENT WEATHER AND MACHINERY BREAKDOWN

In cases where work is disrupted due to inclement weather or machinery breakdown, the Company will endeavour to provide alternate work within the employees competence. Where this is not possible, individual employees may agree with the Company to take unpaid time off, provided that an employee who elects to remain at the workplace will not have pay deducted for the rostered hours of the day or shift.

11.—CAMP BOARD AND LODGING

Camp board and lodging charges will be reimbursed to employees following 12 months continuous service with the Company and at 12 monthly intervals thereafter. Pro-rata reimbursement will be made to employees terminating after 12 months service.

12.—ACCRUED SICK LEAVE

Employees whose employment terminates with the Company will have all unused accumulated sick leave paid out at the rate of pay applicable at the termination date.

13.—LEISURE DAYS

Clause 13 (Leisure Days) of the Award will not apply to employees of the Company who are bound by this Agreement.

14.—EMPLOYEE RELATIONS MATTERS

(a) **Grievance Procedure**

The parties are committed to the satisfactory and timely resolution of issues by those most directly involved, having regard to the object and principles of this Agreement.

An issue includes any question, dispute or difficulty arising out of this agreement.

Any issue will, in the first instance, be raised by an employee(s) with the most appropriate Company representative. If requested, assistance will be provided by the relevant AWU or Company structure as appropriate.

Should the issue remain unresolved following involvement of an official of the AWU and the appropriate Company industrial relations representative and within a sensible time frame, it will be referred to the Western Australian Industrial Relations Commission.

During this resolution process, work will continue normally and the status quo will prevail.

(b) **Shop Stewards**

Accredited AWU Shop Stewards will be afforded reasonable time without loss of pay to attend to site related industrial matters.

(c) **Shop Steward Training**

Accredited AWU Shop Stewards will be granted up to 3 days paid leave per year to attend training courses nominated by the AWU. The granting of such leave will be subject to operational requirements, but will not be unreasonably withheld.

15.—PAYMENT

Employees will be paid fortnightly by electronic transfer directly into an account at a recognised financial institution nominated by the employee.

16.—WAGE RATES

(a) These weekly rates will apply to employees bound by this Agreement and are in lieu of those prescribed by Clause 16(2)(a), 16(2)(c), 16(3) and 17(l) of the Award.

Mine Employee Grade 1	498.40 per week	(12.46 per hour)
Mine Employee Grade 2	543.60 per week	(13.59 per hour)
Mine Employee Grade 3	554.80 per week	(13.87 per hour)
Mine Employee Grade 4	570.40 per week	(14.26 per hour)
Mine Employee Grade 5	617.20 per week	(15.43 per hour)

The rates have been calculated by increasing the equivalent former weekly rate by 6% and, having regard to weekend, public holiday and over time penalties applying to the roster when 12 hour shifts are worked, rolling in the flat rate allowances of 90 cents per hour, $15.60 per shift and an amount equivalent to 12 leisure days, so as to provide one all purpose weekly rate.

The parties agree that an operational requirement for 10 hour shifts is unlikely during the term of the Agreement. However, should this occur, new weekly rates will be calculated by rolling in the flat rate allowance as they apply proportionally to 10 hour shifts. These new rates would only apply to time worked on 10 hour shifts.

(b) Allowances

A mine services employee employed to perform the function of tyre fitter and who is experienced in the duties shall receive an allowance of $25 per week.

A non-production employee who is required to perform the function of leading hand and who is experienced in the role of leading hand shall receive an allowance of $25 per week.

17.—REVIEW OF WAGE RATES

During the term of this Agreement, the wage rates specified herein will be varied as further mining efficiencies are identified, costed and implemented in accordance with the provisions of this Agreement.

18.—CLASSIFICATION DEFINITIONS

1. **Mine Employee Grade 1** means an employee engaged as a labourer, spotter, sampler or mine services employee.

2. **Mine Employee Grade 2** means a mine services employee with more than 3 months service, an ore truck driver, or an employee training on mobile plant.

3. **Mine Employee Grade 3** means an experienced mine services employee, an ore truck driver who operates either loaders (Cat. 988 equivalent or under), tracked dozers, graders or water carts, or an employee engaged as a driller.

4. **Mine Employee Grade 4** means a mine services employee performing a leading hand function or an ore truck driver who operates either large rubber tyred dozers (T690 equivalent), large loaders (Cat. 992 equivalent), or any loader on mill feed.

5. **Mine Employee Grade 5** means a production shift employee who operates excavators with the ability to trim batters, or who performs the leading hand function.

Pursuant to Clause 18. (Employee Relieving in a Higher Capacity) of the Award, the parties agree that the correct mix of employees permanently in each classification is the most desirable method of meeting all operational requirements. It is acknowledged that unforeseen circumstances may occur that require the "daily upgrade" system to be utilised. In these circumstances employees who perform work of a higher classification for all or part of a shift will be paid the higher rate for all of the shift.

19.—SUPERSESSION

This Agreement will replace the Eltin Hedges Gold Mine Agreement 1994 which, upon ratification of this Agreement by the Western Australian Industrial Relations Commission, will cease to have effect.

20.—SIGNATORIES TO AGREEMENT

SIGNED ON BEHALF OF ELTIN SURFACE MINING PTY LTD

P. Trebilco DATE 7/3/1997

SIGNED ON BEHALF OF THE AUSTRALIAN WORKERS' UNION

WESTERN AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS

P. Zorzi DATE 7/3/1997

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE	A B C	DATE	A B C	DATE
Wednesday	D X N	1/01/97	X N D	26/02/97	N D X	23/04/97	N D X	18/06/97
Thursday	D X N	2/01/97	X N D	27/02/97	X N D	24/04/97	N D X	19/06/97
Friday	D X N	3/01/97	D X N	28/02/97	X N D	25/04/97	N D X	20/06/97
Saturday	N D X	4/01/97	D X N	1/03/97	X N D	26/04/97	N D X	21/06/97
Sunday	N D X	5/01/97	D X N	2/03/97	X N D	27/04/97	N D X	22/06/97
Monday	N D X	6/01/97	D X N	3/03/97	X N D	28/04/97	X N D	23/06/97
Tuesday	N D X	7/01/97	D X N	4/03/97	D X N	29/04/97	X N D	24/06/97
Wednesday	N D X	8/01/97	N D X	5/03/97	D X N	30/04/97	X N D	25/06/97
Thursday	X N D	9/01/97	N D X	6/03/97	D X N	1/05/97	X N D	26/06/97
Friday	X N D	10/01/97	N D X	7/03/97	D X N	2/05/97	X N D	27/06/97
Saturday	X N D	11/01/97	N D X	8/03/97	D X N	3/05/97	D X N	28/06/97
Sunday	X N D	12/01/97	N D X	9/03/97	N D X	4/05/97	D X N	29/06/97
Monday	X N D	13/01/97	X N D	10/03/97	N D X	5/05/97	D X N	30/06/97
Tuesday	D X N	14/01/97	X N D	11/03/97	N D X	6/05/97	D X N	1/07/97
Wednesday	D X N	15/01/97	X N D	12/03/97	N D X	7/05/97	D X N	2/07/97
Thursday	D X N	16/01/97	X N D	13/03/97	N D X	8/05/97	N D X	3/07/97
Friday	D X N	17/01/97	X N D	14/03/97	X N D	9/05/97	N D X	4/07/97
Saturday	D X N	18/01/97	D X N	15/03/97	X N D	10/05/97	N D X	5/07/97
Sunday	N D X	19/01/97	D X N	16/03/97	X N D	11/05/97	N D X	6/07/97
Monday	N D X	20/01/97	D X N	17/03/97	X N D	12/05/97	N D X	7/07/97
Tuesday	N D X	21/01/97	D X N	18/03/97	X N D	13/05/97	X N D	8/07/97
Wednesday	N D X	22/01/97	D X N	19/03/97	D X N	14/05/97	X N D	9/07/97
Thursday	N D X	23/01/97	N D X	20/03/97	D X N	15/05/97	X N D	10/07/97
Friday	X N D	24/01/97	N D X	21/03/97	D X N	16/05/97	X N D	11/07/97
Saturday	X N D	25/01/97	N D X	22/03/97	D X N	17/05/97	X N D	12/07/97
Sunday	X N D	26/01/97	N D X	23/03/97	D X N	18/05/97	D X N	13/07/97
Monday	X N D	27/01/97	N D X	24/03/97	N D X	19/05/97	D X N	14/07/97
Tuesday	X N D	28/01/97	X N D	25/03/97	N D X	20/05/97	D X N	15/07/97
Wednesday	D X N	29/01/97	X N D	26/03/97	N D X	21/05/97	D X N	16/07/97
Thursday	D X N	30/01/97	X N D	27/03/97	N D X	22/05/97	D X N	17/07/97
Friday	D X N	31/01/97	X N D	28/03/97	N D X	23/05/97	N D X	18/07/97
Saturday	D X N	1/02/97	X N D	29/03/97	X N D	24/05/97	N D X	19/07/97
Sunday	D X N	2/02/97	D X N	30/03/97	X N D	25/05/97	N D X	20/07/97
Monday	N D X	3/02/97	D X N	31/03/97	X N D	26/05/97	N D X	21/07/97
Tuesday	N D X	4/02/97	D X N	1/04/97	X N D	27/05/97	N D X	22/07/97
Wednesday	N D X	5/02/97	D X N	2/04/97	X N D	28/05/97	X N D	23/07/97
Thursday	N D X	6/02/97	D X N	3/04/97	D X N	29/05/97	X N D	24/07/97
Friday	N D X	7/02/97	N D X	4/04/97	D X N	30/05/97	X N D	25/07/97
Saturday	X N D	8/02/97	N D X	5/04/97	D X N	31/05/97	X N D	26/07/97
Sunday	X N D	9/02/97	N D X	6/04/97	D X N	1/06/97	X N D	27/07/97
Monday	X N D	10/02/97	N D X	7/04/97	D X N	2/06/97	D X N	28/07/97
Tuesday	X N D	11/02/97	N D X	8/04/97	N D X	3/06/97	D X N	29/07/97
Wednesday	X N D	12/02/97	X N D	9/04/97	N D X	4/06/97	D X N	30/07/97
Thursday	D X N	13/02/97	X N D	10/04/97	N D X	5/06/97	D X N	31/07/97
Friday	D X N	14/02/97	X N D	11/04/97	N D X	6/06/97	D X N	1/08/97
Saturday	D X N	15/02/97	X N D	12/04/97	N D X	7/06/97	N D X	2/08/97
Sunday	D X N	16/02/97	X N D	13/04/97	X N D	8/06/97	N D X	3/08/97
Monday	D X N	17/02/97	D X N	14/04/97	X N D	9/06/97	N D X	4/08/97
Tuesday	N D X	18/02/97	D X N	15/04/97	X N D	10/06/97	N D X	5/08/97
Wednesday	N D X	19/02/97	D X N	16/04/97	X N D	11/06/97	N D X	6/08/97
Thursday	N D X	20/02/97	D X N	17/04/97	X N D	12/06/97	X N D	7/08/97
Friday	N D X	21/02/97	D X N	18/04/97	D X N	13/06/97	X N D	8/08/97
Saturday	N D X	22/02/97	N D X	19/04/97	D X N	14/06/97	X N D	9/08/97
Sunday	X N D	23/02/97	N D X	20/04/97	D X N	15/06/97	X N D	10/08/97
Monday	X N D	24/02/97	N D X	21/04/97	D X N	16/06/97	X N D	11/08/97
Tuesday	X N D	25/02/97	N D X	22/04/97	D X N	17/06/97	D X N	12/08/97

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE	A B C	DATE	A B C	DATE
Wednesday	D X N	13/08/97	X N D	8/10/97	N D X	3/12/97	D X N	28/01/98
Thursday	D X N	14/08/97	X N D	9/10/97	N D X	4/12/97	N D X	29/01/98
Friday	D X N	15/08/97	X N D	10/10/97	X N D	5/12/97	N D X	30/01/98
Saturday	D X N	16/08/97	D X N	11/10/97	X N D	6/12/97	N D X	31/01/98
Sunday	N D X	17/08/97	D X N	12/10/97	X N D	7/12/97	N D X	1/02/98
Monday	N D X	18/08/97	D X N	13/10/97	X N D	8/12/97	N D X	2/02/98
Tuesday	N D X	19/08/97	D X N	14/10/97	X N D	9/12/97	X N D	3/02/98
Wednesday	N D X	20/08/97	D X N	15/10/97	D X N	10/12/97	X N D	4/02/98
Thursday	N D X	21/08/97	N D X	16/10/97	D X N	11/12/97	X N D	5/02/98
Friday	X N D	22/08/97	N D X	17/10/97	D X N	12/12/97	X N D	6/02/98
Saturday	X N D	23/08/97	N D X	18/10/97	D X N	13/12/97	X N D	7/02/98
Sunday	X N D	24/08/97	N D X	19/10/97	D X N	14/12/97	D X N	8/02/98
Monday	X N D	25/08/97	N D X	20/10/97	N D X	15/12/97	D X N	9/02/98
Tuesday	X N D	26/08/97	X N D	21/10/97	N D X	16/12/97	D X N	10/02/98
Wednesday	D X N	27/08/97	X N D	22/10/97	N D X	17/12/97	D X N	11/02/98
Thursday	D X N	28/08/97	X N D	23/10/97	N D X	18/12/97	D X N	12/02/98
Friday	D X N	29/08/97	X N D	24/10/97	N D X	19/12/97	N D X	13/02/98
Saturday	D X N	30/08/97	X N D	25/10/97	X N D	20/12197	N D X	14/02/98
Sunday	D X N	31/08/97	D X N	26/10/97	X N D	21/12/97	N D X	15/02/98
Monday	N D X	1/09/97	D X N	27/10/97	X N D	22/12/97	N D X	16/02/98
Tuesday	N D X	2/09/97	D X N	28/10/97	X N D	23/12/97	N D X	17/02/98
Wednesday	N D X	3/09/97	D X N	29/10/97	X N D	24/12/97	X N D	18/02/98
Thursday	N D X	4/09/97	D X N	30/10/97	D X N	25/12/97	X N D	19/02/98
Friday	N D X	5/09/97	N D X	31/10/97	D X N	26/12/97	X N D	20/02/98
Saturday	X N D	6/09/97	N D X	1/11/97	D X N	27/12/97	X N D	21/02/98
Sunday	X N D	7/09/97	N D X	2/11/97	D X N	28/12/97	X N D	22/02/98
Monday	X N D	8/09/97	N D X	3/11/97	D X N	29/12/97	D X N	23/02/98
Tuesday	X N D	9/09/97	N D X	4/11/97	N D X	30/12/97	D X N	24/02/98
Wednesday	X N D	10/09/97	X N D	5/11/97	N D X	31/12/97	D X N	25/02/98
Thursday	D X N	11/09/97	X N D	6/11/97	N D X	1/01/98	D X N	26/02/98
Friday	D X N	12/09/97	X N D	7/11/97	N D X	2/01/98	D X N	27/02/98
Saturday	D X N	13/09/97	X N D	8/11/97	N D X	3/01/98	N D X	28/02/98
Sunday	D X N	14/09/97	X N D	9/11/97	X N D	4/01/98	N D X	1/03/98
Monday	D X N	15/09/97	D X N	10/11/97	X N D	5/01/98	N D X	2/03/98
Tuesday	N D X	16/09/97	D X N	11/11/97	X N D	6/01/98	N D X	3/03/98
Wednesday	N D X	17/09/97	D X N	12/11/97	X N D	7/01/98	N D X	4/03/98
Thursday	N D X	18/09/97	D X N	13/11/97	X N D	8/01/98	X N D	5/03/98
Friday	N D X	19/09/97	D X N	14/11/97	D X N	9/01/98	X N D	6/03/98
Saturday	N D X	20/09/97	N D X	15/11/97	D X N	10/01/98	X N D	7/03/98
Sunday	X N D	21/09/97	N D X	16/11/97	D X N	11/01/98	X N D	8/03/98
Monday	X N D	22/09/97	N D X	17/11/97	D X N	12/01/98	X N D	9/03/98
Tuesday	X N D	23/09/97	N D X	18/11/97	D X N	13/01/98	D X N	10/03/98
Wednesday	X N D	24/09/97	N D X	19/11/97	N D X	14/01/98	D X N	11/03/98
Thursday	X N D	25/09/97	X N D	20/11/97	N D X	15/01/98	D X N	12/03/98
Friday	D X N	26/09/97	X N D	21/11/97	N D X	16/01/98	D X N	13/03/98
Saturday	D X N	27/09/97	X N D	22/11/97	N D X	17/01/98	D X N	14/03/98
Sunday	D X N	28/09/97	X N D	23/11/97	N D X	18/01/98	N D X	15/03/98
Monday	D X N	29/09/97	X N D	24/11/97	X N D	19/01/98	N D X	16/03/98
Tuesday	D X N	30/09/97	D X N	25/11/97	X N D	20/01/98	N D X	17/03/98
Wednesday	N D X	1/10/97	D X N	26/11/97	X N D	21/01/98	N D X	18/03/98
Thursday	N D X	2/10/97	D X N	27/11/97	X N D	22/01/98	N D X	19/03/98
Friday	N D X	3/10/97	D X N	28/11/97	X N D	23/01/98	X N D	20/03/98
Saturday	N D X	4/10/97	D X N	29/11/97	D X N	24/01/98	X N D	21/03/98
Sunday	N D X	5/10/97	N D X	30/11/97	D X N	25/01/98	X N D	22/03/98
Monday	X N D	6/10/97	N D X	1/12/97	D X N	26/01/98	X N D	23/03/98
Tuesday	X N D	7/10/97	N D X	2/12/97	D X N	27/01/98	X N D	24/03/98

Appendix A (Shift Roster)

DAY	A B C	DATE	A B C	DATE
Wednesday	D X N	25/03/98	X N D	20/05/98
Thursday	D X N	26/03/98	X N D	21/05/98
Friday	D X N	27/03/98	X N D	22/05/98
Saturday	D X N	28/03/98	X N D	23/05/98
Sunday	D X N	29/03/98	D X N	24/05/98
Monday	N D X	30/03/98	D X N	25/05/98
Tuesday	N D X	31/03/98	D X N	26/05/98
Wednesday	N D X	1/04/98	D X N	27/05/98
Thursday	N D X	2/04/98	D X N	28/05/98
Friday	N D X	3/04/98	N D X	29/05/98
Saturday	X N D	4/04/98	N D X	30/05/98
Sunday	X N D	5/04/98	N D X	31/05/98
Monday	X N D	6/04/98	N D X	1/06/98
Tuesday	X N D	7/04/98	N D X	2/06/98
Wednesday	X N D	8/04/98	X N D	3/06/98
Thursday	D X N	9/04/98	X N D	4/06/98
Friday	D X N	10/04/98	X N D	5/06/98
Saturday	D X N	11/04/98	X N D	6/06/98
Sunday	D X N	12/04/98	X N D	7/06/98
Monday	D X N	13/04/98	D X N	8/06/98
Tuesday	N D X	14/04/98	D X N	9/06/98
Wednesday	N D X	15/04/98	D X N	10/06/98
Thursday	N D X	16/04/98	D X N	11/06/98
Friday	N D X	17/04/98	D X N	12/06/98
Saturday	N D X	18/04/98	N D X	13/06/98
Sunday	X N D	19/04/98	N D X	14/06/98
Monday	X N D	20/04/98	N D X	15/06/98
Tuesday	X N D	21/04/98	N D X	16/06/98
Wednesday	X N D	22/04/98	N D X	17/06/98
Thursday	X N D	23/04/98	X N D	18/06/98
Friday	D X N	24/04/98	X N D	19/06/98
Saturday	D X N	25/04/98	X N D	20/06/98
Sunday	D X N	26/04/98	X N D	21/06/98
Monday	D X N	27/04/98	X N D	22/06/98
Tuesday	D X N	28/04/98	D X N	23/06/98
Wednesday	N D X	29/04/98	D X N	24/06/98
Thursday	N D X	30/04/98	D X N	25/06/98
Friday	N D X	1/05/98	D X N	26/06/98
Saturday	N D X	2/05/98	D X N	27/06/98
Sunday	N D X	3/05/98	N D X	28/06/98
Monday	X N D	4/05/98	N D X	29/06/98
Tuesday	X N D	5/05/98	N D X	30/06/98
Wednesday	X N D	6/05/98		
Thursday	X N D	7/05/98		
Friday	X N D	8/05/98		
Saturday	D X N	9/05/98		
Sunday	D X N	10/05/98		
Monday	D X N	11/05/98		
Tuesday	D X N	12/05/98		
Wednesday	D X N	13/05/98		
Thursday	N D X	14/05/98		
Friday	N D X	15/05/98		
Saturday	N D X	16/05/98		
Sunday	N D X	17/05/98		
Monday	N D X	18/05/98		
Tuesday	X N D	19/05/98		

GOOD SAMARITAN INDUSTRIES (GSI) EMPLOYEES WAGE AGREEMENT No. AG 11 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Disabled Workers' Union of Western Australia

and

Good Samaritan Industries.

No. AG 11 of 1997.

COMMISSIONER C.B. PARKS.

8 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 11 OF 1997.

HAVING heard Mr G. Hocking (of Counsel) on behalf of the first named party and Mr P.G. Robertson on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement titled the Good Samaritan Industries (GSI) Employees Wage Agreement, filed in the Commission on 20 January 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This agreement shall be known as the Good Samaritan Industries (GSI) Employees Wage Agreement.

2.—SCOPE

This agreement applies to persons with disabilities who are eligible for receipt of the Disability Support Pension and membership to the Disabled Workers Union of Western Australia ("the Union"), and who are employed by GSI ("the employer") at any of the employer's premises.

3.—TERM

This agreement shall be for a term of 3 years from the date hereof.

4.—WAGES

(1) An employee covered by this Agreement who works full time shall be paid in accordance with the minimum rates set out in Clause 5.

(2) The hourly rate for employees who work part time shall be calculated by dividing the appropriate weekly rate by 35.

(3) The rate of wage paid to an employee shall be in accordance with the appropriate Wage Level set out in Clause 5 as determined through Performance Appraisals administered by the employer.

(4) In consideration of the Wage Level to be applied the employer shall conduct a Performance Appraisal on every applicant/employee. The following Appraisal Schedule shall, as far as practicable, be followed:

(a) Within in a period of not more than 12 weeks from commencement a wage assessment appraisal will be carried out to determine the appropriate rate of pay.

(b) Upon successful completion of a 3 month probationary period from commencement the applicant will have their ongoing employment contract confirmed.

(c) A 12 monthly Appraisal shall be conducted from commencement.

(d) Thereafter an Appraisal shall be conducted at least once each year on the anniversary of commencement.

(5) Nothing in this Agreement shall prevent the employer from offering increments between or above Wage Levels or to facilitate movement between or above Wage Levels in reward of performance.

(6) Notwithstanding this Agreement, where an employee's performance no longer meets the relevant wage criteria, whether as a result of significant deterioration in relation to the employee's disability or other cause(s), the employer shall be entitled to adjust the Wage Level in accordance with appraisal criteria following advice and discussion with the employee and the Union.

(7) In the event that an employee is dissatisfied with their wage determination, the employee may seek a review of the Wage level.

(a) Such a Wage Level review shall occur through the timely application of the employers grievance procedures.

(b) In the event that the employee remains dissatisfied with their wage determination following the completion of the grievance procedure the Union, at the request of the employee, may advocate on the employee's behalf to effect a resolution. In this respect, the union shall be entitled to access the employee's performance appraisal documentation.

(8) The parties to this Agreement acknowledge that the employer is a service provider seeking to meet the individual needs of employees subject to this Award through a "Service Employment Model" and that such a model of service provision is contrary to a "Commercial Model of Employment'. In consequence, it is recognised that "Wages" paid will reflect the societal goals, inefficiencies and earnings of the service model rather than those of a "commercial model". Further, it is not the purpose of this Agreement to promote one position or employee at the expense of others.

5.—MINIMUM RATES OF WAGE

(1) The minimum rates of full time wages payable to employees covered by this Agreement shall be:

Pre-Employment	Supplement
Work Trial	$38.00/week ($1.00/hour)
Level	Wage Rate
Employee—Wage Level I	$60.80/week ($1.74/hour)
Employee—wage Level II	$72.80/week ($2.08/hour)

(a) These rates will be reviewed annually unless otherwise agreed by the parties.

(b) For the purpose of review, the Consumer Price Index (CPI) for Perth and Western Australia will be taken as a guide together with any other factors agreed by the parties.

(c) Such review is to be completed by 31 March each year for implementation on the first day of the first pay period commencing after 1 July of the same year.

(2) Where an employee, upon registration of this Agreement, is in receipt of an existing wage in excess of the relevant assessed Wage Level, such existing age shall be maintained until such time as the relevant Wage Level reaches the actual paid rate, or the next higher Wage Level is achieved through appraisal. Nothing in this Clause however shall preclude the application of Clause 6 in proper circumstances.

6.—DEFINITIONS

In this agreement, the following definitions shall apply:

"Service Employment Model"—means a model of employment which is based on the employment of goals and training needs of employees. Work is created for individuals and the commercial considerations of such work are secondary to the needs and employment of those persons subject to this Agreement. As this model is not based primarily on commercial considerations and decision making, earnings are restricted accordingly.

"Commercial Model of Employment"—means employment in commercial enterprises where the primary focus is on meeting the needs of the enterprise and the availability of jobs and the provision of training and support is in keeping with employer requirements relative tot he profitability of the enterprise. The labourforce, and training of the labourforce, is a factor of production not the primary objective of the enterprise.

7.—WAGE CRITERIA

In this agreement, the following wage criteria shall apply:

Employee
Level 1 Criteria to Meet

Each employee will receive the opportunity to be trained and supported that will result in the employee demonstrating the ability to achieve:

minimum agreed productivity level

• in agreed quality of work

• demonstrated ability to understand and work within the relevant rules

• commitment and interest to continue working

• a willingness to be instructed and trained

• demonstrated willingness and capacity to work within accepted OS&H practices of GSI

Employee
Level 2 Each employee will demonstrate the ability to achieve

• consistent increased productivity and quality levels

• consistent work under minimal supervision

• capacity to take on increased responsibility

8.—DISPUTE SETTLEMENT PROCEDURES

Where a dispute concerning the operation of this agreement arises, the following steps shall be taken:

(1) Step 1

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the employee or employees concerned and where the employee(s) so request(s), the Union workplace representative.

(2) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the appropriate senior representative of the employer, the employee or employees concerned and where the employee(s) so request(s), the Union workplace representative who shall attempt to settle the dispute.

(3) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the employer, the employee or the employees concerned and where the employee(s) so request(s), an official of the Union who shall attempt to settle the dispute.

(4) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

9.—NUMBER OF EMPLOYEES BOUND

The parties estimate that 200 employees will be bound by this agreement.

Signed in PERTH on this day of 1997

The Common Seal of *(common seal affixed)*

GOOD SAMARITAN INDUSTRIES

was affixed with the authority of the Board of Management by:

(signed by Grant Adams)

General Manager

Signed on behalf of

DISABLED WORKERS UNION OF WESTERN AUSTRALIA

(signed by R A Hughes) President

(signed by G Cassidy) Secretary

HOSPITAL SALARIED OFFICERS JOONDALUP HEALTH CAMPUS ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 299 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association Of Western Australia (Union Of Workers)

and

Mayne Nickless Limited operating as Joondalup Health Campus.

No. AG 299 of 1996.

COMMISSIONER C.B. PARKS.

4 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 299 OF 1996

HAVING heard Ms C. Thomas on behalf of the first named party and Ms B. Horner 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 Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1996, filed in the Commission on 11 November 1996, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Public Holidays
16. Long Service Leave
17. Sick Leave
18. Family, Bereavement and Personal Leave
19. Allowances
20. Overpayments
21. Salaries
22. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

ATTACHMENT 2 General Principles

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Joondalup Health Campus along with allowing the benefits from those improvements to be shared by employees and Joondalup Health Campus.

(2) This Agreement places priority on the parties at Joondalup Health Campus taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Joondalup Health Campus.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officers (Joondalup Health Campus) Award, 1996 employed by Mayne Nickless Limited, ACN 004 073 410, trading as Health Care of Australia, incorporated in Victoria, operating as Joondalup Health Campus, (hereinafter referred to as Joondalup Health Campus), and to the employer employing those employees.

(2) The estimated number of employees bound by this Agreement at the time of registration is 54 employees.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers (Joondalup Health Campus) Award, 1996(hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 December 1997, provided that this Agreement, including allowances and salaries, may be varied or replaced prior to its expiry in order to implement any agreement arising out of this Agreement.

(2) The parties to this Agreement agree to re-open negotiations at least six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

(1) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims for productivity improvements which occurred prior to 1 January 1996.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

(a) improve the productivity and efficiency of Joondalup Health Campus;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Joondalup Health Campus;

(c) ensure high quality patient services in a safe, healthy and equitable work environment;

(d) ensure high quality of employment and jobs; and

(e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

(a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Joondalup Health Campus and its clients;

(b) ensuring that Joondalup Health Campus operates in a manner consistent with the principles outlined in Attachment 2, section (1).

(c) developing and pursuing changes on a co-operative basis; and

(d) ensuring that Joondalup Health Campus operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Joondalup Health Campus, Management and Employees bound by this Agreement are committed to—

(a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—

(i) is simply the best way of doing things;

(ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;

(iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;

(iv) is outcome rather than simply activity based;

(v) provides the processes, structures, rights and obligations which are essential to ensure that the full capacity for innovation of employees is fully and effectively used;

(vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and

(vii) are to be based on the following principles—

- customer/patient focus
- management commitment
- employee participation
- leadership
- information analysis
- policies and plans
- appropriate standards
- hospital performance
- cost effectiveness
- working smarter

(b) Support the clinical, teaching, research and organisational goals of the hospital and contribute to the achievement of those goals as active members of the health service community.

(c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.

(d) Actively contribute to the achievement of health service budgets.

(e) Assist with achieving the hospital waiting list priorities and day surgery targets.

(f) Co-operate with the development and implementation of strategies to achieve length of stay targets.

(g) Participate in a Multidisciplinary approach to patient care.

(h) The principles of public sector administration, in particular to the principles contained in Attachment 2 of this Agreement.

In addition, Joondalup Health Campus is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR FURTHER PRODUCTIVITY BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate an amendment to this Agreement with Joondalup Health Campus, a representative from Joondalup Health Campus will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within Joondalup Health Campus.

(c) The agenda should include but not be limited to—

(i) changes in work organisation, job design and working patterns and arrangements;

(ii) examination of terms and conditions of employment to ensure they are suited to Joondalup Health Campus's operational requirements;

(iii) identification and implementation of best practice across all areas of service delivery;

(iv) (i), (ii) and (iii) can be achieved by means including but not limited to;

(aa) new training and skills development programs as and where required;

(bb) the optimum use of human and capital resources including new technology;

(cc) quality assurance and continuous improvement programs;

(dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and

(ee) active occupational health and safety risk reduction, training and rehabilitation programs.

(2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) **Productivity Improvements**

Productivity improvements are changes which increase the efficiency and effectiveness of Joondalup Health Campus in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes to Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) **Sharing Gains from Productivity Improvement**

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to Joondalup Health Campus. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to Joondalup Health Campus.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which Joondalup Health Campus takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by Joondalup Health Campus and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by Joondalup Health Campus can be returned to the employees.

(c) **Identifying Productivity Increases**

To assist in such a review a model for identifying productivity increases is contained in Attachment 1. The model is included as a guide only and it is expected that it will be modified to meet the needs of Joondalup Health Campus as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Joondalup Health Campus could result in increases greater than the targeted amount, however there are practical limits on how much can be paid and when the increases can be paid for specific operational improvements.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) **Relationship Between Agreements and Awards**

Consistent with the Industrial Relations Act 1979 and the State Wage Principles, this Agreement shall provide the whole of the employees' wage increases for the life of the Agreement.

(2) Subject to the Industrial Relations Act 1979 and the State Wage Principles, the parties reserve their rights to seek to amend this Agreement to provide for further salary increases in return for productivity improvements at the Joondalup Health Campus.

(3) The Joondalup Health Campus agrees for the term of this Agreement to be bound by the provisions of this Agreement and as such , commits not to enter into Workplace Agreements under the Workplace Agreements Act, 1993, nor to enter an Australian Workplace Agreement, however subsequently legislated, with employees who would otherwise fall within the scope of this Agreement.

(4) Subject to Clause 43—Flexibility Agreements of the Award, nothing within this Agreement prevents the employer from offering an employee employment on terms more favourable than the terms of this Agreement.

10.—RATES OF PAY AND THEIR ADJUSTMENT

(1) **Targeted Outcome**

It is agreed that—

(a) The minimum targeted outcome is an increase in salaries of 10% which includes the initial salary increase flowing from this Agreement and any subsequent increases negotiated by Joondalup Health Campus and the HSOA, as contemplated by clause 10(2).

(b) It would be in exceptional circumstances where the targeted outcome would not be achieved.

(2) **Wage Adjustments**

This Agreement shall provide for salary increases as outlined in Clause 22.—Salaries of this Agreement payable as follows—

(a) A first increase of 5%, payable from 1 January 1996;

(b) A second increase of 2% from 1 July 1996; and

(c) A further 3% targeted minimum increase**,** provided sufficient productivity improvements are negotiated by Joondalup Health Campus and the HSOA and this Agreement is amended to reflect such agreement, payable no earlier than 1st January 1997 unless otherwise agreed by the parties to this Agreement. This increase is to be negotiated in accordance with Clause 8(2) of this Agreement.

(3) **The Minimum Increases**

(a) The increases outlined above are in addition to the 1st and 2nd Arbitrated Safety Net Adjustments. However, if the third Arbitrated Safety Net Adjustment referred to by the Western Australian Industrial Relations Commission in its December 1994 State Wage Case Decision becomes available during the period of this Agreement, it shall be absorbed into this Agreement to the extent to which this Agreement provides a salary increase in excess of the amount provided by the third Arbitrated Safety Net Adjustment.

(b) Payment of the increases will be made having regard to—

(i) the continued commitment of the parties to the objectives of this Agreement and the implementation of the initiatives and reforms included within it;

(ii) whether the reforms agreed have been implemented or whether they are in the process of being implemented;

(iii) whether the targets included in an agreement as a measure of increased productivity, efficiency or effectiveness, have been met; and

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Joondalup Health Campus.

(2) (a) To assist in meeting these obligations, Joondalup Health Campus will assist by providing appropriate resources having regard to the operational requirements of Joondalup Health Campus and resource requirements associated with developing amendments to this Agreement aimed at achieving further salary increases in return for productivity improvements;

(b) It is accepted that employees of Joondalup Health Campus who are involved in the enterprise bargaining process will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with Joondalup Health Campus and shall not unreasonably affect the operation of Joondalup Health Campus;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur and to assist in the achievement of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party's position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forums.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) The object of this Clause is to provide a set of procedures for dealing with any questions, disputes or difficulties arising under this Agreement and for dealing with any questions, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) In the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

(a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;

(b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the Joondalup Health Campus representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Joondalup Health Campus or his/her nominee, as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;

(c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;

(d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or the Chief Executive Officer of Joondalup Health Campus (or his/her nominee) of the existence of a dispute or disagreement;

(e) The Secretary of the HSOA (or his/her nominee) and the Chief Executive Officer of Joondalup Health Campus (or his/her nominee) shall confer on the matters notified by the parties within five working days and—

(i) where there is agreement on the matters in dispute the parties shall be advised within two working days;

(ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

(i) Ordinary hours of work of thirty eight per week;

(ii) Flexitime roster covering a settlement period of four weeks;

(iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;

(iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Commission.

(v) In addition to the above arrangements, where the employee and the employer so agree in writing, shifts of not more than 12 hours may be worked.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

(i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;

(ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;

(iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;

(iv) The arrangement may allow for additional time off in lieu of penalty rates;

(v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

(vi) Any proposed arrangement or agreement which extends beyond these parameters must be referred to the Industrial Relations Commission for ratification.

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above, shall be consistent with the working arrangements prescribed in this clause.

(2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

(3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

(i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.

(ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and

(iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the Joondalup Health Campus.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital is being enhanced by its operation. Such alternative working arrangements shall be in accordance with subclause (1)(a)and (d).

(4) Flexitime Arrangements

(a) Flexitime Roster

(i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.

(ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.

(iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.

(iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

(i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.

(ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

6.00 am to 9.30 am

11.00 am to 2.30 pm (Minimum half an hour break)

3.30 pm to 6.00 pm

(d) Core Periods

Core periods may be set by agreement between the employer and the employee.

(e) Lunch Break

(i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.

(ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

(i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.

(ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

(i) For recording time worked, there shall be a settlement period which shall consist of four weeks.

(ii) The settlement period shall commence at the beginning of a pay period.

(iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

(i) Credit hours in excess of the required 152 hours to a maximum of 7 hours 36 minutes are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(ii) Credit hours in excess of 7 hours 36 minutes at the end of a settlement period shall be lost.

(iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

(i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period.

Such debit hours shall be carried forward to the next settlement period.

(ii) For debit hours in excess of 4 hours, an employee shall be required to take leave without pay for the period necessary to reduce debit hours to those specified in subparagraph (i) of this subclause.

(iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

(i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.

(ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or

(bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

(cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

(iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

(i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.

(ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 44 minutes notwithstanding the following—

(i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

(ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.

(iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.

(iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time workers aged 21 years or more shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time worker as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

15.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

(1) The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(2) With effect from 1 April 1996 employees covered by this Agreement shall not be eligible to receive the two floating holidays otherwise provided for by Operational Instruction 657/95 and Circular to Ministers No. 1 of 1994 issued by the Office of The Premier. Provided that the holiday employees become eligible to receive on 2 January 1996 may be taken in accordance with the above mentioned Circular before 1 January 1997.

16.—LONG SERVICE LEAVE

In addition to Clause 9 of the Hospital Salaried Officers (Joondalup Health Campus) Award, 1996, the following shall apply;

At the request of the employee and with the agreement of the employer, an employee faced with pressing personal needs, may be paid in lieu of taking a portion of long service leave.

17.—SICK LEAVE

This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

18.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, step child, parent, step parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

(b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.

(c) Family leave is not cumulative from year to year.

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

(i) the spouse of the employee;

(ii) the child or step-child of the employee;

(iii) the parent or step-parent of the employee;

(iv) the brother, sister, step brother or step sister; or

(v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

19.—ALLOWANCES

(1) Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 22.—Salaries of this Agreement.

20.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or $50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) the employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

21.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 1 January 1996 until the expiry of this Agreement.

(2) Minimum Salaries are as follows;

LEVELS	Award Rate	Award Rate + 2 ASNA of $835 p.a.	Award Rate + 2 ASNA + 5% EB effective 1 Jan 1996	Award Rate + 2 ASNA + 5% + 2% effective 1 July 1996
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
LEVEL 1				
under 17 years of age	10,452	10,881	11,425	11,654
17 years of age	12,206	12,707	13,342	13,609
18 years of age	14,248	14,833	15,574	15,886
19 years of age	16,491	17,168	18,026	18,387
20 years of age	18,520	19,280	20,244	20,649
1st year of full-time equivalent adult service	20,343	21,178	22,237	22,682
2nd year of full-time equivalent adult service	20,997	21,832	22,924	23,382
3rd year of full-time equivalent adult service	21,647	22,482	23,606	24,078
4th year of full-time equivalent adult service	22,295	23,130	24,287	24,772
LEVEL 2	22,946	23,781	24,970	25,469
	23,597	24,432	25,654	26,167
	24,346	25,181	26,440	26,969
	24,864	25,699	26,984	27,524
	25,629	26,464	27,787	28,343

LEVELS	Award Rate	Award Rate + 2 ASNA of $835 p.a.	Award Rate + 2 ASNA + 5% EB effective 1 Jan 1996	Award Rate + 2 ASNA + 5% + 2% effective 1 July 1996
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
LEVEL 3	26,533	27,368	28,736	29,311
	27,236	28,071	29,475	30,064
	27,975	28,810	30,251	30,856
	29,154	29,989	31,488	32,118
LEVEL 4	29,771	30,606	32,136	32,779
	30,696	31,531	33,108	33,770
	31,647	32,482	34,106	34,788
	32,998	33,833	35,525	36,235
LEVEL 5	33,702	34,537	36,264	36,989
	34,669	35,504	37,279	38,025
	35,664	36,499	38,324	39,090
	36,688	37,523	39,399	40,187
LEVEL 6	38,660	39,495	41,470	42,299
	40,124	40,959	43,007	43,867
	42,204	43,039	45,191	46,095
LEVEL 7	43,317	44,152	46,360	47,287
	44,727	45,562	47,840	48,797
	46,188	47,023	49,374	50,362
LEVEL 8	48,323	49,158	51,616	52,648
	50,073	50,908	53,453	54,522
LEVEL 9	52,721	53,556	56,234	57,358
	54,563	55,398	58,168	59,331
LEVEL 10	56,580	57,415	60,286	61,491
	59,824	60,659	63,692	64,966
LEVEL 11	62,415	63,250	66,413	67,741
	65,050	65,885	69,179	70,563
LEVEL 12	68,663	69,498	72,973	74,432
	71,104	71,939	75,536	77,047
	73,888	74,723	78,459	80,028
CLASS 1	78,098	78,933	82,880	84,537
CLASS 2	82,308	83,143	87,300	89,046
CLASS 3	86,516	87,351	91,719	93,553
CLASS 4	90,726	91,561	96,139	98,062

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of $1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Salaries.—Specified Callings and Other Professionals are as follows;

(a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the union and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, or any other professional calling as agreed between the Union and employers, shall be entitled to Annual Salaries as follows—

LEVELS	Award Rate	Award Rate + 2 ASNA of $835 p.a.	Award Rate + 2 ASNA + 5% EB effective 1 Jan 1996	Award Rate + 2 ASNA + 5% + 2% effective 1 July 1996
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
LEVEL 3/5	26,533	27,368	28,736	29,311
	27,975	28,810	30,251	30,856
	29,771	30,606	32,136	32,779
	31,647	32,482	34,106	34,788
	34,669	35,504	37,279	38,025
	36,688	37,523	39,399	40,187
LEVEL 6	38,660	39,495	41,470	42,299
	40,124	40,959	43,007	43,867
	42,204	43,039	45,191	46,095
LEVEL 7	43,317	44,152	46,360	47,287
	44,727	45,562	47,840	48,797
	46,188	47,023	49,374	50,362
LEVEL 8	48,323	49,158	51,616	52,648
	50,073	50,908	53,453	54,522
LEVEL 9	52,721	53,556	56,234	57,358
	54,563	55,398	58,168	59,331
LEVEL 10	56,580	57,415	60,286	61,491
	59,824	60,659	63,692	64,966
LEVEL 11	62,415	63,250	66,413	67,741
	65,050	65,885	69,179	70,563
LEVEL 12	68,663	69,498	72,973	74,432
	71,104	71,939	75,536	77,047
	73,888	74,723	78,459	80,028
CLASS 1	78,098	78,933	82,880	84,537
CLASS 2	82,308	83,143	87,300	89,046
CLASS 3	86,516	87,351	91,719	93,553
CLASS 4	90,726	91,561	96,139	98,062

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

(i) Employees, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment;

(ii) Employees, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment;

(iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

(a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.

(b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

(i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or

(ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

(5) The rates of pay in this Agreement include the first $8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(6) The rates of pay in this Agreement 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 in so far 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.

(7) The first and second arbitrated safety net increases have, for the purposes of this agreement been offered against past productivity improvements.

22.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration, that being the _____ day of _____ 1996.

Michael Hartland

(signed by M Hartland) 24/10/96

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

common seal affixed

(signed by C Panizza) 24/10/96

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Ian MacDonald

(signed by Ian McDonald

22.10.96

(Signature) (Date)

Chief Executive Officer, Joondalup Health Campus, for an on behalf of Mayne Nickless Ltd, ACN 004073410, trading as Health Care of Australia, incorporated in Victoria and operating as Joondalup Health Campus.

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Joondalup Health Campus as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- **Productivity Improvements which can be made:** Identification of all possibilities for improving productivity through looking at possible changes in what work is done, how the work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- **Barriers to Productivity Improvements:** Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters:** Management may need to look at the structures within which the work is done and how they can be improved upon.
- **Management Style:** Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities:** Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

  Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- **Culture and Environment:** Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity

- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—GENERAL PRINCIPLES

General Principles of Administration and Management

(1) The principles of administration and management to be observed are that—

(a) Joondalup Health Campus shall be administered in a manner which emphasises the importance of service to the community;

(b) Joondalup Health Campus is to be structured and organised as to achieve and maintain operational responsiveness and flexibility, thus enabling it to adapt quickly and effectively to changes in policy and priority;

(c) Joondalup Health Campus is to be structured and administered as to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay;

(d) administrative responsibilities are to be clearly defined and authority is to be delegated sufficiently to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities;

(e) Joondalup Health Campus should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in view;

(f) resources are to be deployed so as to ensure their most efficient and effective use;

(g) proper standards of financial management and accounting are to be maintained at all times; and

(h) proper standards are to be maintained at all times in the creation, maintenance and retention of records.

General Principles of Human Resource Management

(2) (a) The principles of Human Resource Management that are to be observed are that—

(i) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;

(ii) no power with regard to human resource management is to be exercised on the basis of nepotism or patronage;

(iii) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;

(iv) there is to be no unlawful discrimination against employees or persons seeking employment in the Public Sector on a ground referred to in the Equal Opportunity Act 1984 or any other ground; and

(v) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Health, Safety and Welfare Act 1984.

(b) In matters relating to—

(i) the selection, appointment, transfer, secondment, classification, remuneration, redeployment, redundancy or termination of employment of an individual employee; or

(ii) the classification of a particular office, post or position,

in its department or organisation, an employing authority is not subject to any direction given, whether under any written law or otherwise, by the Minister of the Crown responsible for the department or organisation, but shall, subject to this Act, act independently.

General Principles of Official Conduct

(3) The principles of official conduct that are to be observed by the employer and employees are that they—

(a) are to comply with the provisions of—

(i) this Act and any other Act governing their conduct;

(ii) public sector standards and codes of ethics; and

(iii) any code of conduct applicable to the public sector body or employee concerned;

(b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and

(c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.

LANCE HOLT SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 1996.

No. AG 80 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Lance Holt School.

No. AG 80 of 1997.

Lance Holt School (Enterprise Bargaining) Agreement 1996.

30 April 1997.

Order.

HAVING heard Ms T. Howe on behalf of the Applicants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Lance Holt School (Enterprise Bargaining) Agreement 1996 filed in the Commission on the 24th day of March 1997 be registered effective on and from the 29th day of April 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Lance Holt School (Enterprise Bargaining) Agreement 1996 and replaces the Lance Holt School (Enterprise Bargaining) Agreement 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Relationship to Parent Award
7. Objective
8. Salaries
9. Agreed Efficiency Improvements
10. Dispute Resolution Procedure
11. No Further Claims
12. No Precedent
13. Signatories
Appendix 1

3.—PARTIES TO THE AGREEMENT

This agreement is made between the Lance Holt School (the School) 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 teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976.

(2) The number of teachers covered by this agreement is 6.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on and from 29th April 1997 and shall expire on 31st May 1998.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the Independent Schools' Teachers' Award 1976 (the award).

Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

7.—OBJECTIVE

The nature and purposes of this agreement are to—

(1) Consolidate and further develop initiatives arising out of the award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The School and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during the School's time and partly during the teachers' time.

8.—SALARIES

The salary rates prescribed in the Lance Holt School (Enterprise Bargaining) Agreement 1994 are to be increased by—

(i) 2.5% from 1 July 1996
(ii) 2.5% from 1 February 1997
(iii) 2.5% from 1 July 1997
(iv) 2.6% from 1 February 1998

as per Appendix I.

9.—AGREED EFFICIENCY IMPROVEMENTS

(1) Senior Teacher

Notwithstanding prior agreement reached by the parties to the award, any award amendment relating to the establishment of the Senior Teacher 3 classification shall not apply for the purposes of this agreement.

(2) Payment for Relief Teachers

Notwithstanding the provisions of paragraph (5)(a) of clause 11.—Salaries of the award, relief teachers, employed for five consecutive working days or less, may be engaged by the day or part day and shall be paid the daily rate as prescribed by the award or a pro-rate rate on the basis of the number of periods worked in proportion to the number of periods in the particular school day.

(3) First Teaching Appointment

A teacher appointed to his/her first teaching position who, at the end of the initial twelve months, is deemed by the School not to have developed adequate teaching skills, may be appointed as a temporary teacher subject to subclause (2) of Clause 2.—Induction of Appendix 1 of the award.

(4) Long Service Leave

(a) Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, from 1 July 1995 a teacher who has completed eight years' continuous service with the School shall be entitled to take ten weeks' long service leave on full pay.

(b) After a further two years of continuous service an additional three weeks' long service leave is payable.

(c) Following ten years' continuous service long service leave will accrue at the rate of 1.3 weeks per year and may be taken on a pro rata basis on approval by the council.

(5) Parental Leave

(a) The School will grant Parental Leave in accordance with current minimum conditions as contained in the Western Australian Minimum Conditions of Employment Act (1993).

(b) Staff may request an extension to parental leave by up to a further 12 months by agreement between the teacher and the School. Teachers requesting this extension are required to give one term's notice of such request.

(6) Study Leave

Study leave of two days' paid and two days' unpaid leave is available for teachers enrolled in tertiary studies in education or related disciplines or other courses, subject to the School Co-ordinator being satisfied that the course would benefit the school.

(7) Duties Other Than Teaching

Classroom teachers (F.T.E. 1.0) will receive a minimum of one hour DOTT (duties other than teaching) time per week.

(8) Promotion Positions

While maintaining the promotions structure described in the award, the School shall have the discretion to adapt this structure to meet its educational needs. The normal processes of appointment to promotion positions will be followed.

(9) Carer's Leave

(a) Teachers shall be entitled to up to two (2) days paid carer's leave per annum.

(b) Such leave will not accumulate.

10.—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 to the agreement together with any additional representatives as may be agreed by the parties.

(3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

11.—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.

12.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

13.—SIGNATORIES

Christine E. Kennedy
Lance Holt School

T.I. Howe
Independent Schools' Salaried Officers Association of Western Australia,
Industrial Union of Workers

APPENDIX I

	1991	1994	1996 Agreement			
	October	Agreement				
STEP	AWARD	1 June 1994	1 July 1996	1 Feb 1997	1 July 1997	1 Feb 1998
1	$21,935	$23,010	$23,558	$24,107	$24,655	$25,225
2	$23,268	$24,408	$24,990	$25,572	$26,153	$26,758
3	$24,600	$25,805	$26,420	$27,035	$27,650	$28,290
4	$26,138	$27,419	$28,072	$28,726	$29,379	$30,059
5	$27,573	$28,924	$29,613	$30,303	$30,992	$31,709
6	$28,803	$30,214	$30,934	$31,654	$32,375	$33,123
7	$30,033	$31,505	$32,255	$33,006	$33,757	$34,538
8	$31,570	$33,117	$33,906	$34,695	$35,485	$36,306
9	$33,261	$34,891	$35,722	$36,554	$37,385	$38,250
10	$34,645	$36,343	$37,209	$38,075	$38,941	$39,842
11	$35,875	$37,633	$38,530	$39,427	$40,324	$41,256
12	$37,413	$39,246	$40,182	$41,117	$42,052	$43,025
13	$38,950	$40,859	$41,832	$42,806	$43,780	$44,793

MAIN ROADS WESTERN AUSTRALIA 1996 ENTERPRISE AGREEMENT
No. PSG AG 18 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Main Roads

and

Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others.

No. PSG AG 18 of 1996.

Main Roads Western Australia 1996 Enterprise Agreement.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

14 April 1997.

Order.

HAVING heard Ms A. Holmes on behalf of the Applicant and Mr K. Ross on behalf of the Civil Service Association of Western Australia (Inc); the Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers; the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Ms J. Harrison on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch; The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers Western Australian Branch and the Automotive Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Main Roads Western Australia 1996 Enterprise Agreement attached hereto be and is hereby registered as an industrial agreement and shall have effect from the first pay commencing on or after 20 March 1997.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Main Roads Western Australia 1996 Enterprise Agreement".

2.—ARRANGEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE AND RATIFICATION
   3.1 Scope
   3.2 Ratification
4. PARTIES BOUND TO THE ENTERPRISE AGREEMENT
   4.1 Employer
   4.2 Unions
   4.3 Exclusion of Other Parties
5. DURATION OF THE AGREEMENT
   5.1 Effective Date
   5.2 Expiry Date
   5.3 Renewal of the Agreement
   5.4 Replacement Agreement
   5.5 Variations to the Agreement
6. NO FURTHER CLAIMS
7. RELATIONSHIP TO AWARDS
8. OBJECTIVES
9. IMPLEMENTATION OF BEST PRACTICE
   9.1 Introduction
   9.2 Leadership
   9.3 Policy and Planning
   9.4 Customer Focus
   9.5 Partnerships
   9.6 People
   9.7 Management by Fact
   9.8 Continuous Improvement
   9.9 Results
10. CORPORATE PERFORMANCE
   10.1 Corporate Performance Indicators
   10.2 Main Roads Performance Index
   10.3. Assessment of Corporate Performance
11. PAY INCREASES
   11.1 Pay Increases
   11.2 Sharing Main Roads Performance
   11.3 Distribution of Main Roads Performance
12. PARTIES TO THE AGREEMENT
   12.1 Employers
   12.2 Associations / Unions

SCHEDULE A—COMMON WORKING CONDITIONS

3.—SCOPE AND RATIFICATION OF THE AGREEMENT

3.1 Scope

This Enterprise Agreement shall, subject to the provisions of the following paragraph, apply to all employees of Main Roads Western Australia, including Senior Executive Service employees working in Main Roads, who are members of or eligible to be members of the Associations / Unions party to this agreement. At the date of registration of this Agreement the number of employees to this Agreement was 1 700.

This Agreement does not apply to the Commissioner of Main Roads.

3.2 Ratification

The Agreement is to be presented for ratification by the appropriate Industrial jurisdiction as follows :

Western Australian Industrial Relations Commission

(Under the terms of Section 41 of the Industrial Relations Act 1979) and the Public Service Arbitrator.

This Agreement will apply to employees who are members of or are eligible to be members of the following Associations and Unions:

- Communication, Electronics, Engineering and Plumbing Union.
- Civil Service Association of Western Australia Incorporated.
- Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia.
- Federated Liquor and Allied Industries Employees Union of Australia, WA Branch, Union of Workers.
- Australian Manufacturing Workers Union.
- Western Australian Builders Labourers, Painters, Plasterers Union of Workers.

4.—PARTIES BOUND TO THE ENTERPRISE AGREEMENT

4.1 Employer

- Commissioner of Main Roads

4.2 Unions

- Communication, Electronics, Engineering and Plumbing Union.
- Civil Service Association of Western Australia Incorporated.
- Construction, Mining Energy, Timberyards, Sawmills and Woodworkers Union of Australia.
- Federated Liquor and Allied Industries Employees Union of Australia, WA Branch, Union of Workers.
- Australian Manufacturing Workers Union.
- Western Australian Builders Labourers, Painters, Plasterers Union of Workers.

4.3. Exclusion of Other Parties

The parties bound by this Agreement will oppose any subsequent application by another body or organisation to be joined to this Agreement.

5.—DURATION OF THE AGREEMENT

5.1. Effective Date

The Agreement shall come into effect from the beginning of the first pay period commencing on or after the date of this Agreement's ratification by the Western Australian Industrial Relations Commission (under the terms of Section 41 of the Western Australian Industrial Relations Act 1979) and the Public Service Arbitrator (under the terms of Division Two of the Western Australian Industrial Relations Act 1979).

5.2. Expiry Date

This Agreement shall expire on 1 July 1998. Each party to this Agreement expressly accepts that its terms bind them for the duration of the Agreement.

5.3. Renewal of the Agreement

Negotiations between the parties for renewal of this Agreement or for the formation of a new Agreement will commence no later than six (6) months prior to the expiry date of this Agreement.

5.4. Replacement Agreement

The parties agree to continue the spirit of this Agreement until replaced by a further agreement. Changes to the base pay rates arising from this Agreement will continue to apply in the absence of any further agreement providing the benefits continue to be realised.

5.5 Variations to the Agreement

All parties agree that during the life of this Agreement that this Agreement may be varied where necessary and where there is mutual agreement.

Any variation to this Agreement will be in accordance with relevant provisions of the relevant Industrial Relations Legislation.

6.—NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted, except for :

(a) those provided under the terms and conditions of this Enterprise Agreement,

(b) those arising out of variations to the salary scale from relevant classification determinations,

(c) those provided for in a State Wage Case Decision, and

(d) those provided from repackaging of working conditions.

7.—RELATIONSHIP TO AWARDS

This Agreement shall be read in conjunction with the existing Awards and Agreements that apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. All parties recognise that the relevant Parent Awards consist of :

Awards of Western Australian Industrial Commission	• Building Trades (Government) Award [1966] • Catering Employees and Tea Attendants Award (Government) [1982] • Engineering Trades (Government) Award [1967] • Government Officers Salaries Allowance and Conditions Award [1989]

8.—OBJECTIVES

The objectives of this Agreement shall be to increase productivity and build a better workplace within Main Roads by :

- assessing the current status of the implementation of Best Practice within the organisation and setting goals for the implementation of Best Practice,
- identifying improvement strategies and measures of corporate performance,
- communicating and gaining acceptance by all employees within Main Roads to the goals, strategies and measures for the implementation of Best Practice,
- auditing and reporting the status of corporate performance to all employees and parties to this Agreement, and
- sharing rewards from increased productivity between Main Roads, its customers and employees.

In addition to the above a major objective of this Enterprise Agreement will be to deliver a common agreement for working conditions for all Main Roads employees.

9.—IMPLEMENTATION OF BEST PRACTICE

9.1 Introduction

The parties to this Agreement agree that Total Quality Management (TQM) will be the guiding philosophy by which Main Roads will be managed to meet the needs of its customers.

To enable managers, team leaders and employees to implement Total Quality Management, Main Roads has developed a TQM Improvement Matrix. The matrix is based on the Australian Quality Awards criteria and is a planning and measurement tool designed to promote best practice management. The matrix has the full support of the Associations and Unions party to this Agreement.

The matrix addresses the following eight key principles under which Main Roads will continually work towards "Best Practice" to meet the needs of its customers. The key principles are :

- Leadership
- Policy and Planning
- Customer Focus
- Partnerships
- People
- Management by Fact
- Continuous Improvement
- Results

For each key principle a goal has been set to describe the required performance standard when Main Roads has reached excellence in the implementation of Best Practise.

For each key principle there are improvement strategies listed to allow for the implementation of Best Practice within Main Roads. These strategies have been included within this Agreement based on the following criteria :

- extension of strategies contained within Main Roads 1994 Enterprise Agreement,
- inclusion of strategies which have an effect or input on the majority of employees,
- inclusion of strategies which are key corporate improvement initiatives, and
- inclusion of strategies which contain an employee relations characteristic.

All employees and parties to this Agreement fully support the implementation of Best Practice and shall actively work towards the achievement of the stated goals, strategies and performance targets contained within this Agreement.

9.2 LEADERSHIP

9.2.1 Goal

"We have unity of purpose, apply the principles of Total Quality Management and

integrate our community responsibilities throughout the community."

9.2.2 Strategies

"Best Roads Blueprint"

Main Roads has developed "Best Roads " as a blueprint for providing value for money on the State's road network. It provides the vision for the organisation to the year 2000 and sets the scene for future road and traffic management in Western Australia.

"Best Roads" has three key elements :

- to make the best use of skills,
- to make the best use of assets, and
- to make best use of resources.

To implement "Best Roads" an implementation plan has been developed and a number of actions have been set in place. These actions include :

- separation of purchaser/provider roles,
- commercialisation,
- program management improvement,
- contract management,
- contracting strategy,
- contracting—metropolitan implementation plan,
- contracting—rural implementation plan,
- review of plant services,
- ARRB Transport Research,
- managing property assets,
- revised workforce and resource plan,
- review of Corporate Directorates, and
- performance reporting.

All actions have a designated project manager and timelines and projects will be reported to internal and external steering committees.

The result in implementing Best Roads will see substantial savings to the community over the next five years which can be redirected to improve the State's road network.

Main Roads will provide ongoing consultation on proposed changes with all unions and associations party to this Agreement and provide information to all employees on actions being undertaken and savings realised through the implementation of Best Roads.

"Leadership Development"

The last few years have seen Main Roads shift from an organisation whose major responsibility was to build and maintain roads to an organisation which has the responsibility for the management of the State's Road Network.

The scope of the changes occurring at Main Roads mean that managers need to apply highly developed leadership skills to guide Main Roads employees through circumstances which may present testing challenges.

During the life of this Agreement Main Roads will develop and implement a Leadership Development Program to provide leaders, at all levels within the organisation, with additional learning and support to apply excellence in leading and developing employees for the challenges at hand. Prior experience and individual strengths will be recognised and built upon to produce leadership performance which is expressive of Best Practice.

The Leadership Program will provide executive employees and managers with the opportunity to participate in this comprehensive and practical program. Learning opportunities will then be cascaded to team leaders and teams at every level in the organisation.

"Project Management"

Project Management is an essential skill employees require in the delivery of Main Roads' works and corporate programs.

All parties agree that Main Roads will build on the commitments contained within Main Roads 1994 Enterprise Agreement with the aim to move towards best practice in project management.

9.3 POLICY AND PLANNING

9.3.1 Goal

"Our Values are fully integrated into our organisation and quality practices are used in policy and planning processes."

9.3.2 Strategies

"Main Roads Planning Processes"

Main Roads will implement a strategic management cycle and a business planning cycle to ensure all works and corporate programs focus on the needs of customers.

The planning cycles will provide the link between :

- Customer needs,
- Main Roads Corporate Plan,
- State Road Strategy,
- State Road Program,
- State Operational Road Plan,
- Commissioner's Performance Agreement,
- Business Plans, and
- Individual Performance and Development Agreements.

"Living our Values"

Main Roads has developed a set of values to guide our behaviour towards achieving the mission and goals of the organisation. These values will be reviewed from time to time to ensure they meet the needs of Main Roads customers.

The implementation of these values will enable Main Roads to move from being rule based to value based.

Employees and parties to this Agreement are committed to living these values.

9.4 CUSTOMER FOCUS

9.4.1 Goal

"We understand the needs and expectations of all our customers and our efforts are directed to achieving full customer satisfaction."

9.4.2 Strategies

"Commercial Practices"

Main Roads will further commercialise its operations following on from its achievements within Main Roads 1994 Enterprise Agreement. The implementation of commercial practices will see Main Roads move from a "well managed government department to an expertly managed public sector business"—*Best Roads Blueprint.*

Commercialisation in Main Roads is a process which introduces elements of commercial practice into the way business is conducted. It is a process which facilitates better business practices and resource management to achieve customer satisfaction.

Commercialisation encompasses the following major characteristics :

- customer focus (recognition and responsiveness to internal and external customer needs),
- well defined and understood Corporate Direction,
- proactive management practices supported by better management information,
- price/service competitiveness (effective resource management),
- employee empowerment in conjunction with increased level of accountability (reduce bureaucracy),
- adaptable, responsive and flexible business processes, organisation structures and people, and
- measurement and improvement focus.

Main Roads will train and develop its employees on the implementation of processes to allow the continuous improvement of commercial practices within the organisation.

"Internal Customers"

Public Sector management policy requires Government agencies and monopolies to be structured so as to clearly separate regulation and policy development from the supply of services.

During this Agreement Main Roads will be restructured to a purchaser/provider organisation with highly developed skills in road strategies, road program management and road delivery management.

The purchaser role will be concerned with the efficient resource allocation and scheduling the delivery of road projects based on external customer needs.

The provider role will be concerned with providing value for money service and productivity to meet purchaser requirements.

Main Roads will undertake action to implement the purchaser/provider model and to provide information to all employees and parties to this agreement on the implementation of the model.

"Customer Focus Programs"

All employees within Main Roads will be fully committed to continually improving services to customers. To enable this Main Roads has developed a Customer Focus Strategy which will be implemented over the next three years. The strategy will see the following initiatives :

- implementation of customer service charters,
- implementation of a Disability Services Plan,
- customer focus awareness training,
- customer focus skilled training, and
- development and implementation of customer focus action plans within work areas to focus on issues such as customer feedback systems, continuous improvement of customer focus initiatives and measurement of customer satisfaction.

All employees and parties to this Agreement fully support the Main Roads Customer Focus Strategy and the need to continuously improve services based on customer requirements.

9.5 PARTNERSHIPS

9.5.1 Goal

"We have mutually beneficial relationships with customers and suppliers to provide improved processes, products and services."

9.5.2 Strategies

"Working with Suppliers"

For many years Main Roads and its employees have been working in partnership with suppliers resulting in quality products and services.

As Main Roads focuses on the new role of road owner and manager and increases the contracting out of work, there will be a much greater need to work very closely with suppliers.

This Agreement provides a commitment by all parties to work with suppliers to Main Roads as partners for the betterment of the State's Road Network.

9.6 PEOPLE

9.6.1 Goal

"People who are committed to our Vision, Mission and Values are working in an environment that supports ongoing development to their full potential with empowerment to continuously improve our processes, products and services."

9.6.2 Strategies

"Working Conditions"

The strategic objective of parties to this Agreement is to have a common framework of working conditions and reward structure for all employees to facilitate workplace reform, provide equity within the workplace and reduce complexity in the administration of working conditions.

This will be achieved through the development of Working Conditions Agreements by the end of 1996 for the following :

- Engineering and Science employees,
- Professional, Technical and Clerical employees,
- Road & Bridge Construction and Maintenance employees, and
- Trades employees.

By the end of February 1997 these Working Conditions Agreements will be compacted into a Single Working Conditions Agreement which will provide working conditions for all Main Roads employees with common administrative processes.

Schedule A of this Agreement provides the current common working conditions.

"Workforce Skills and Resource Plan"

The parties recognise the changing environment affecting Main Roads. This environment will impact Main Roads' workforce in both skill requirements and numbers of employees. In the interests of both Main Roads and its employees it is necessary for any changes required to be planned and managed in a way that reflects Main Roads work requirements and is fair and equitable to employees.

During the life of this agreement, Main Roads will review the current Workforce Plan 1995—1997 and develop a new Workforce Skills and Resource Plan to extend through to the year 2000. This Plan will implement the direction set by the "Best Roads" Blueprint to extend Main Roads challenge to develop a highly competent and skilled workforce. This involves acquisition of new skills and a progressive reduction in workforce numbers over the life of this Agreement.

The parties to this agreement accept the need for these changes to be implemented and agree to manage these changes co-operatively to best serve the needs of Main Roads customers and Main Roads employees.

In accordance with the Notification of Change Clause, contained within the Schedule A Working Conditions, Main Roads with consult with the association/unions on any significant change to the permanent workforce. The Negotiation Committee for this Agreement will be used as a forum to discuss and consult on all matters affecting workforce skills and training planning and management including matters such as redeployment, retraining and redundancy.

"Individual Performance and Development Agreements (PANDAS)"

All parties recognise that individual performance is essential to the achievement of good organisational and work team performance. This Agreement requires a commitment from all employees to measure their individual performance.

This commitment will be achieved through the development and achievement of the outcomes of Performance and Development Agreements (PANDAs).

By 30 June 1997 all employees and their Line Managers will :

- develop a PANDA containing individual performance indicators,
- identify ways to collect data to measure performance,
- obtain endorsement of the PANDA,
- commence collection of data to measure performance,
- identify actions they can take to improve their products and services, and
- undertake reviews of their PANDA.

During this Agreement a project will be undertaken in consultation with parties to this Agreement to ensure that Performance and Development Agreements are developed and applied in a fair and equitable manner.

"Employee Surveys"

During the life of this Agreement Main Roads will undertake employee surveys to obtain information on employee attitudes and requirements. Main Roads will consult with all unions and associations party to this Agreement before undertaking surveys and full confidentiality will be maintained on all information obtained from individual employees.

Main Roads will provide a summary of the results of surveys to all employees and will undertake improvement action in areas of concern.

All parties to this Agreement fully support the need for employee surveys as an essential tool to gain information about the organisation.

"Classification System"

Main Roads currently has the following classification systems:

- Professional Engineers Classification System—a hierarchical system based on a number of set standards.
- Public Sector Classification System—a hierarchical system based on a number of factors under the 'BIPERS' System together with an assessment on internal/external relativities and work value.
- Skills Classification System for AWU positions—a competency based pay system.
- Engineering Trades Classification Determination.
- Building Trades Classification Determination.

To increase the flexibility of employees within the organisation and further reduce complexity and administration costs all parties agree to the development of a single classification model.

By 1 July 1998 Main Roads will develop an integrated classification model in consultation with all unions and associations party to this Agreement.

The classification model will be developed following a full review of:

- national classification and competency standards,
- existing classification systems and processes,
- national training agenda and wage case issues,
- existing determinations of pay levels,
- existing and future career opportunities, and
- existing pay structures and systems.

"Recognition and Reward System"

The parties recognise that the recognition and reward of employees is a key element to build a better workplace. There are many options and approaches to recognition and reward utilised in private and public sector organisations. The challenge during the life of this agreement is to develop a recognition and reward system that reflects the requirements of government policy and is based on best practice.

During the life of this agreement, Main Roads in consultation with parties to this Agreement will develop improved systems for recognition and reward. This may involve reviewing current recognition and reward systems and trialing new approaches.

The parties commit to working co-operatively on the development and implementation of a recognition and reward system.

"Training and Development"

Main Roads will provide all employees with the training and development that is required to provide value for money customer service.

Training and development requirements for employees will be agreed in performance and development discussions with Line Managers and be based on any requirements set in the Main Roads Workforce and Skills Plan.

"Safety and Health"

Main Roads and all parties to this Agreement aim to be a best practice employer in its handling of safety, health, and welfare. This aim can only be achieved through teamwork, commitment and co-operation between employees.

Main Roads will provide :

- a safe and healthy working environment,
- continuous improvement of safety and health systems,
- reporting of safety and health indicators,
- training and development of employees in safety and health requirements, and
- free and confidential personal counselling to employees and their families through the Employees Assistance Program

Employees are responsible for :

- being aware of and following all safe working practices,
- bringing near misses and potential hazards to the attention of line managers, and
- working with other Employees to resolve potential hazards in the workplace.

" Fair Treatment"

Fair treatment means having a workplace where employees are treated fairly, with respect and without unlawful discrimination and harassment.

Main Roads is committed to providing a workplace which :

- treats all employees fairly by making decisions based on work requirements and not on personal characteristics,
- promotes equal employment opportunity for employees and provides equal access to opportunities such as recruitment and selection, acting, special projects and training courses, and
- ensures employees are free from discrimination, harassment and victimisation.

Employees are responsible for :

- treating co-workers fairly and with respect, and
- ensuring that they do not discriminate against, harass or victimise co-workers or members of the public.

9.7 MANAGEMENT BY FACT

9.7.1 Goal

"Information is used for structured problem solving in support of a responsive, prevention and improvement based approach to management throughout Main Roads."

9.7.2 Strategies

"Commercial Systems"

Commercial systems will be implemented within Main Roads to ensure data and information is used in a way that enables all processes to be continually improved.

To allow the implementation of commercial systems within Main Roads all employees and parties to this agreement will be committed to:

- the proper use of systems and processes to ensure the true costs of products and services can be obtained,
- providing reports and making decisions based on facts provided from data produced by Main Roads systems, and
- measurement of processes and systems by using performance indicators to ensure the continuous improvement of processes and systems based on customer requirements.

In addition Main Roads will undertake action to continuously improve the management of data and data systems.

" Performance Indicators"

All parties agree that performance indicators are essential to provide information to assess the performance of services/products and how they are contributing to Main Roads outcomes.

During this agreement Main Roads will review and implement performance indicators at the appropriate level within the organisation.

9.8 CONTINUOUS IMPROVEMENT

9.8.1 Goal

"We have all processes under control and are continuously improving them to deliver better products and services to our customers."

9.8.2 Strategies

"Quality Systems"

Within Main Roads 1994 Enterprise Agreement there was a commitment to implement quality assurance into a number of areas. This resulted in excellent results with certification to Australian Standard 9001 or 9002 to sixteen areas within Main Roads. The scope of these certifications included all activities within the Road Technology Services Directorate, Main Roads Supply Function and all Construction and Maintenance areas. In addition a number of areas within Main Roads have documented corporate and other key processes.

Within this Agreement there is a commitment by all employees to move beyond quality assurance and into process

improvement. Process improvement will require the continual improvement of all processes to ensure they are:

- aligned with our corporate mission, objectives and values,
- integrated with other management processes, and
- simple and systematic.

To enable process improvement Main Roads has developed a process improvement plan and will provide training to employees on the use of process improvement and total quality management (TQM) tools and techniques.

"Benchmarking"

Benchmarking will be used to allow Main Roads to assess the implementation of Best Practice within the organisation and to learn from other Best Practice organisations. Benchmarking activities may include :

- assessing Main Roads systems, processes and performance with similar organisations, partners, suppliers and industry bodies, or
- applying for Best Practice Awards such as the Australian Quality Awards.

All parties to this Agreement are fully supportive of the need to undertake benchmarking activities.

"Innovation and Technology Transfer"

Main Roads and all parties to this Agreement are committed to using innovation and technology transfer for the betterment of the State's Road Network.

Main Roads will provide the appropriate employee training and development in the use of new innovations and technology.

"Payroll System"

To provide improvements to Main Roads Payroll System the following actions will be implemented during the life of this agreement.

- all payments to employees will be via Electronic Funds Transfer,
- all travel advances will be made via Electronic Funds Transfer,
- final pays will be deposited into employees' accounts via Electronic Funds Transfer on the working day after their last day of work, and
- salaries and wages pay period ends will be aligned and salaries will become time sheet driven.

To allow salaries and wages pay periods to be aligned it will require conversion of the salaries pay period to the wages pay period. This will be implemented through consultation with all parties.

9.9 RESULTS

9.9.1 Goal

"We are recognised by community and government as achieving our Vision and Mission."

9.9.2 Strategies

"Corporate Plan"

Main Roads Corporate Plan provides :

- community benefits to which Main Roads significantly contributes,
- mission and values which guide achievement of community benefits,
- corporate objectives based on community benefits,
- corporate strategies showing how each of the corporate objectives are achieved, and
- performance indicators and targets which provide measurement of corporate objectives.

All parties to this Agreement and all employees are fully committed to the achievement of the corporate objectives contained within the Main Roads Corporate Plan.

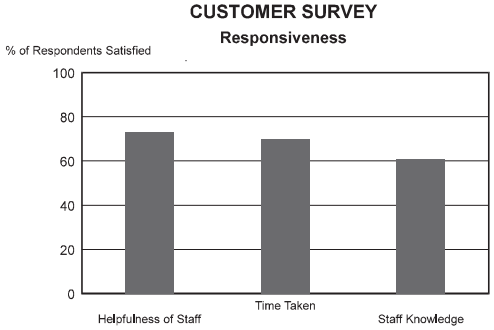
10.—CORPORATE PERFORMANCE

10.1 Corporate Human Resource Performance Indicators

The following indicators will be used to set targets and measure corporate human resource performance during the life of this Agreement. Targets to 30 June 1997 have been set for all corporate human resource performance indicators. All parties to this Agreement are committed to the achievement of these targets and will work with Main Roads in setting new targets for the following financial year.

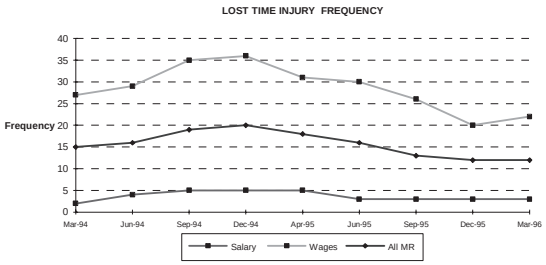
10.1.1 Customer Survey (Responsiveness)

Customer satisfaction levels based on service received from Main Roads employees have been previously measured as shown below. All parties agree that levels of customer satisfaction needs to be increased over the next financial year.



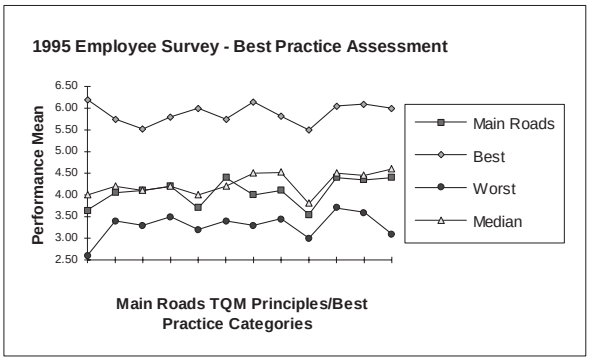
10.1.2 Safety and Health

Below is the current trend for the Main Roads Lost Time Injury Frequency Rate. A target has been set for all Main Roads employees to work towards a frequency rate of below 10 by 30 June 1997.



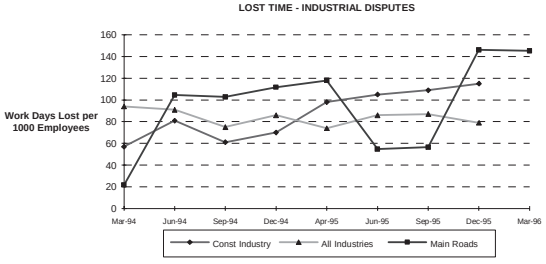
10.1.3 Employee Survey—Best Practice Assessment

The 1995 Employee Survey provided an assessment of Main Roads performance compared to other organisations based on Main Roads TQM principles which are the same as Best Practice Benchmark Categories. All parties agree that Main Roads need to improve its assessment of Best Practice to above that of median best practice benchmarking organisations.



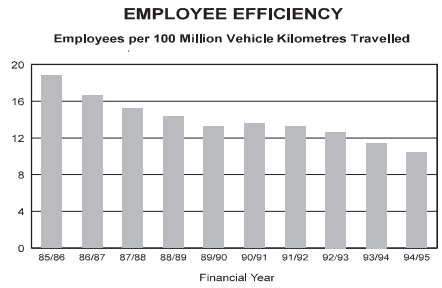
10.1.4 Industrial Relations

All parties to this Agreement will work towards achieving a target trend rate for lost time industrial disputes equal to or below that of Main Roads as at March 1994.



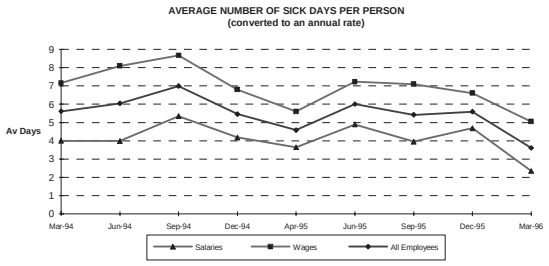
10.1.5 Employee Efficiency

The graph below indicates the total number employees against vehicle kilometres travelled in Western Australia. All parties agree that this trend should continue over the 1996/1997 financial year.



10.1.6 Sick Leave

All parties agree that the use of sick leave is essential for cases where employees are sick or are providing care for sick family members in accordance with relevant working conditions. All parties agree that sick leave is not used for any other purposes and that monitoring of sick leave provides an important corporate performance indicator.



10.2 Main Roads Performance Index

The parties to this Agreement have developed a performance index model which encapsulates all of the activities for which Main Roads has a significant role and provides a measure of Main Roads productivity performance.

The Performance Index measures inputs against outputs.

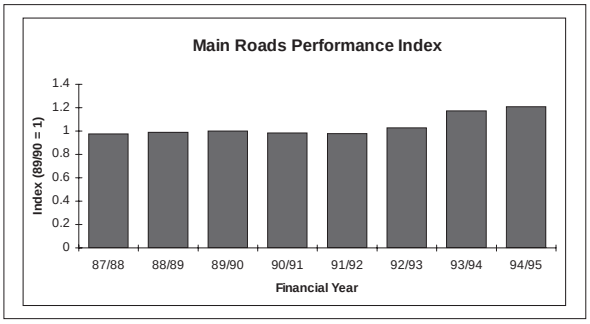
Measured inputs for the performance index are:

- number of employees,
- cost of Main Roads Plant Section,
- cost of materials, fuels and lubricants,
- cost of plant depreciation,
- salaries and wages of contractors/consultants, and
- depreciation of assets plus a return on investment for capital works (similar to an annual user fee).

Measured outputs for the performance index are:

- road roughness on Highways and Main Roads,
- new roads, bridges, etc.,
- traffic signals for local government,
- sign and line marking works for local government,
- ministerial correspondence,
- car travel on Highways and Main Roads,
- truck travel on highways and Main Roads,
- road crashes at localities under Main Roads jurisdiction, and
- congestion on Highways and Main Roads.

Measurements of Main Roads Performance Index are shown in the graph below.



All parties to this Agreement and all employees accept that the Main Roads Performance Index will be the system used to provide a measurement of corporate performance during this Agreement.

The parties to the Agreement will continue to develop and improve the Main Roads Productivity Index. Any changes to the Main Roads Productivity Index will be as agreed between the parties.

10.3 Assessment of Corporate Performance

Corporate performance within Main Roads will be assessed at the end of each financial year and will be based on a report detailing the following:

- The status of the implementation of Best Practice within Main Roads and objective evidence of achievements on the implementation of improvement strategies under the eight key Total Quality Management principles.
- The results achieved by Main Roads in applications for Best Practice Awards such as the Australian Quality Award.
- The assessment of corporate performance indicators and measurements against performance targets.
- Measurement of Main Roads performance by the Main Roads Performance Index.

In addition the report will provide details of improvement strategies and targets for corporate performance indicators for the following financial year.

Main Roads will provide a report on the assessment of corporate performance to all employees and parties to the Agreement together with the value of any pay increase.

11.—PAY INCREASES

11.1 Pay Increases

There will be the following pay increases during the term of this Agreement:

- An increase of 2% upon registration by the Industrial Relations Commissions of a Single Working Conditions Agreement (Schedule A) as per clause 9.6.2.
- An increase based on measurement of Main Roads performance by the Main Roads

  Performance Index at 30 June 1997, absorbing the 2% paid for the registration of a Single Working Conditions Agreement (Schedule A). The increase will be paid following collation of annual results and assessment of corporate performance and will apply from the beginning of the first pay period commencing on or after 1 July 1997.
- An increase based on measurement of Main Roads performance by the Main Roads

  Performance Index at 30 June 1998. The increase will be paid following collation of annual results and assessment of corporate performance and will apply from the beginning of the first pay period commencing on or after 1 July 1998.

11.2 Sharing Main Roads Performance

The measurement of Main Roads performance by the Main Roads Performance Index will be shared between

Main Roads and its employees in accordance with following:

Main Roads' share. = 60%

Employees' share. = 40%

11.3 Distribution of Main Roads Performance

The employees' share will be distributed in accordance with the following formula:

Employees' share divided by Main Roads annual salary and wages payroll as at June 30 of the preceding financial year be paid as a percentage of employees salaries and wages.

Note: The payroll is exclusive of payroll tax but inclusive of all other payroll overheads.

12.—PARTIES TO THE AGREEMENT

SIGNATORIES

12.1 Employers

..... (*Commissioner of Main Roads)*	...../...../..... *(Date)*

12.2 Associations / Unions

..... (*On behalf of the Association of Professional Engineers, Scientists and Managers, Australia)*	...../...../..... *(Date)*
..... (On behalf of the Australian Workers Union, Western Australian Branch)	...../...../..... (Date)
..... *(On behalf of the Communication, Electronics, Engineering and Plumbing Union.)*	...../...../..... *(Date)*
..... (On behalf of the Civil Service Association of Western Australia Incorporated)	...../...../..... (Date)
..... *(On behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia)*	...../...../..... *(Date)*
..... *(On behalf of the Federated Liquor and Allied Industries Employees Union , WA Branch, Union of Workers)*	...../...../..... *(Date)*
..... *(On behalf of the Australian Manufacturing Workers Union* registered as AFMEPKIU)	...../...../..... *(Date)*
..... (On *behalf of the Western Australian Builders Labourers*, Painters, Plasterers Union of Workers)	...../...../..... *(Date)*

SCHEDULE A

COMMON WORKING CONDITIONS

1.—TITLE

This document shall be known as the "Main Roads Western Australia Schudule A Common Working Conditions".

2.—ARRANGEMENT

Framework

1. Title
2. Arrangement
3. Clauses not included within these Common Conditions
4. Definitions

Association/Union Matters

5. Notification of Change
6. Right of Entry
7. Employee Record

Contract Of Service

8. Certificate of Service
9. Contract of Service
10. Copies of Main Roads Western Australia Common Conditions Appendix
11. Fixed Term Contracts
12. Part Time Employment

Employee Relations

13. Discipline
14. Dispute Settlement
15. Grievance Settlement

Parental Leave

16. Adoption Leave
17. Maternity Leave
18. Parental Leave -Part Time Work
19. Paternity Leave

Special Purpose Leave

20. Association/Union Business Leave
21. Council Leave
22. International Sports Events Leave
23. Leave Without Pay
24. Trade Union Training Leave
25. Training with the Defence Force Reserves Leave
26. Witness and Jury Service Leave

Training And Development Leave

27. Employee Development Leave
28. English Language Training Leave
29. Study Leave

Holidays And Leave

30. Holidays

Allowances

31. District Allowance
32. Diving Allowance
33. Flying Allowance
34. Motor Vehicle Allowance
35. Removal Allowance

Pay

36. Payment of Pay
37. Pay
38. Adjustment of Allowances

Schedules: Rates of Pay

A Apprentices
B Deleted
C Deleted
D Building Trades
E Tea Attendants
F Civil Service Association
G Engineering Trades

Schedules: Allowances

H District Allowance
I Other Allowances
J Motor Vehicle Allowance

Schedules: District Allowance Boundaries

K District Allowance Boundaries

3.—CLAUSES NOT INCLUDED IN THESE COMMON CONDITIONS

3.1. Building Trades (Government) Award 1966

1. Title
2. Arrangement
2A. Award Modernisation
2B. Structural Efficiency Exercise
3. Scope
4. Area
5. Term
6. Definitions
8. Seniority
9. Wages—excluding Sub- Clauses (1), (2) and (4)
13. Special Rates and Provisions
14A Fares and Travelling Time (other than Distant Work)
14B Fares and Travelling Time—Plumbers
15. Apprentices
16. Hours
17. Rest Period
18. Shift Work
19. Overtime
21. Annual Leave and Loading
22. Long Service Leave
23. Sick Leave
26. Compassionate Leave

29. Distant Work
31. Provision of Appliances
32. Protection of Employees' Tools
33. Change Room
36. Posting of Award and Union Notices
37. Prohibition of Junior Employees
38. Mixed Functions
39. Introduction of Change
40. Board of Reference
41. Temporary Employees

Schedule "A"—List of Respondents
Schedule "B"—Memorandums of Agreement
Schedule "C"—Hospital Environment Allowance
Appendix "A"—Asbestos Eradication

3.2. Tea Attendants

1. Title
1A. State Wage Principles
2. Arrangement
3. Area
4. Scope
5. Term
6. Definitions
8. Hours
9. Additional Rates for Ordinary Hours
10. Overtime
11. Casual Employees
12. Part Time Employees
13. Meal Breaks
14. Meal Money
15 Sick Leave
16. Compassionate Leave
19. Annual Leave
20. Long Service Leave
24. Apprentices
25. Bar Work
26. Higher Duties
27. Uniforms & Laundering
28. Protective Clothing
29. Employees Equipment
30. Travelling Facilities
32. Roster
33. Change and Rest Rooms
34. First Aid Kit
35. Posting of Award and Union Notices
37. Breakdown

3.3. Government Officers Salaries Allowances and Conditions Award

1. Title
2. Arrangement
3. Area of Operation
4. Scope
5. Term of Award
10. Salaries and Salary Ranges
11. Salaries—Specified Callings
12. Annual Increments
14. Higher Duties Allowance
16. Hours
17. Shift Work
18. Overtime
19. Annual Leave
21. Long Service Leave
22. Sick Leave
26. Short leave
30. Camping Allowance
32. Disturbance Allowance
36. Property Allowance
37. Protective Clothing
38. Relieving Allowance
40. Sea Going Allowance
41. Transfer Allowance
42. Travelling Allowance
43. Weekend Absence from Residence
44. Preservation of Rights
46. Notification of Change
49. Wage Fixing Principles
50. Establishment of Consultative Mechanisms
51. Award Modernisation

Schedule A—List of Respondents
Schedule B—Government Officers Not Covered by the Scope of this Award
Schedule C—List of Awards/Agreements replaced by this Award
Schedule F—Camping Allowance
Schedule I—Overtime
Schedule J—Travelling, Transfer, and Relieving Allowance
Schedule K—Shiftwork Allowance
Schedule M—Travel Concessions for Annual Leave

3.4. Engineering Trades (Government) Award 1967

1. Title
1A. State Wage Principles
1B. Paid Rates
2. Arrangement
3. Area and Scope
4. Term
5. Classification Structure and Definitions
7. Higher Duties
9. Under-Rate Workers
10. No New Designation
11. No Reduction
12. Apprentices (other than Pay)
13. Hours of Duty
14. Overtime
15. Shift Work
17. Special Rates and Provisions
19. Fares and Travelling Allowance
20. Distant Work—Construction
23. Annual Leave
24. Sick Leave
25. Long Service Leave
26. Shop Stewards
27. Notice Boards
29. Board of Reference
30. Compassionate Leave
36. Training Leave
38. Complaints Against Employees
37. Structural Efficiency
39. Liberty to Apply
40. Employees North of 26th Parallel—Travel Concession, Annual Leave

First Schedule—Wages excluding Sub—Clauses (1), (2), (3), (4), (5), (8), (9), (10), (11)
Second Schedule—List of respondents bound by the Award
Third Schedule—Memoranda of Agreement
Fourth Schedule—Definitions of previous classifications
Fifth Schedule—Building Management Authority Wages and Conditions

4.—DEFINITIONS

"Commissioner" means Commissioner of Main Roads or the Deputy Commissioner appointed in accordance with Section 7 of the Western Australian Main Roads Act 1930 or as amended at any time.

"Main Roads" means Main Roads Western Australia who is the "employer", which means Commissioner of Main Roads, the Deputy Commissioner or the Commissioners delegate appointed in accordance with Section 7 of the Western Australian Main Roads Act 1930 or as amended at any time.

"Fixed term Contract Employee" means an Employee who is employed on a full time or part time basis on a contract of service for a specified duration.

"Base Location" means the place in which the principal work of an Employee is carried out, as defined by Main Roads.

"Metropolitan Area" means that area within a radius of 50 kilometres from the Perth city railway station.

"Part-time Employee" means an Employee who is usually employed on average to work not more than 30 hours per week, and not less than 15 hours per week.

5.—NOTIFICATION OF CHANGE

5.1. (a) Where Main Roads proposes to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on Employees, Main Roads shall notify the Employees who may be affected by the proposed changes and the relevant Association/Union before implementation.

(b) For the purpose of this clause "significant effects" include termination of employment; major changes in the composition, operation or size of Main Roads workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of Employees to other work or locations and restructuring of jobs.

Provided that where this Agreement or any other Agreement makes provision for alteration of any of the matters referred to in this clause an alteration shall be deemed not to have significant effect.

5.2. (a) Main Roads shall discuss with the Employees affected and the Association/Union, inter alia, the introduction of the changes referred to in Sub-clause 5.1 of this clause, the effects the changes are likely to have on Employees, measures to avert or mitigate the adverse effects of such changes on Employees and shall give prompt consideration to matters raised by the Employees and/or the Association/Union in relation to the changes.

(b) The discussion shall commence as early as practicable after a firm decision has been made by Main Roads to make the changes referred to in Sub-clause 5.1 of this clause, unless by prior arrangement, the Association/Union is represented on the body formulating recommendations for change to be considered by Main Roads.

(c) For the purposes of such discussion Main Roads shall provide to the Employees concerned and the Association/Union all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on Employees and any other matters likely to affect Employees. Provided that Main Roads shall not be required to disclose confidential information, the disclosure of which would be inimical to Main Roads interests.

6.—RIGHT OF ENTRY

The duly authorised official of the Association/Union shall on notification to Main Roads have the right to enter Main Roads premises during working hours, including meal breaks, for the purpose of discussing with Employees covered by this Agreement, the legitimate business of the Association/Union or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of Employees.

7.—EMPLOYEE RECORD

7.1. Main Roads shall keep or cause to be kept an Employee record showing:

(a) the name of each Employee;

(b) the nature of the work performed;

(c) the hours worked each day;

(d) the pay, allowances and overtime paid to each Employee

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

7.2. (a) The Employee record shall on demand be produced for inspection by the duly authorised official of the Association/Union during Main Roads' usual office hours and when necessary the duly authorised official of the Association/Union may take a copy of the record.

(b) The Association/Union shall:

(i) give prior notification to Main Roads on when it proposes to inspect the record;

(ii) not conduct interviews during normal working hours in circumstances which will result in Main Roads' business being unduly interrupted or otherwise hampered; and

(iii) treat with confidentiality any information obtained from time and Employee records.

(c) Main Roads office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly authorised official of the Association/Union calls to inspect it, the record will be made available for inspection at a mutually convenient time at Main Roads' office.

(d) Employees, subject to Main Roads convenience, shall be entitled to examine and take copies of all material maintained on their personal file or other Main Roads information relating to them. They can do this either directly or through an authorised representative.

8.—CERTIFICATE OF SERVICE

On the request of an Employee and prior to the Employee's termination of service Main Roads shall provide a Certificate of Service containing full information as to the period of service and the nature of the duties performed by the Employee.

9.—CONTRACT OF SERVICE

9.1. (a) Employees eligible to be members of the Community and Public Sector Union, SPSF Group (W.A) Branch, Civil Service Association of Western Australia shall initially be appointed on probation for a period not exceeding six months.

However, Employees appointed from the Public Sector who have at least six months' continuous satisfactory service immediately prior to their permanent appointment will not be required to serve a probationary period.

(b) At any time during the period of probation Main Roads may review the appointment and terminate the services of the Employee by the giving of one week's notice or payment in lieu thereof, or the Employee may give one week's notice or payment in lieu thereof.

(c) As soon as possible following the expiry of the period of probation Main Roads shall:

(i) confirm the appointment; or

(ii) extend the period of probation for up to six months (to a maximum period of 12 months period);

(iii) allow the probationary employment to lapse.

(d) Where Main Roads extends the period of probationary employment the contract of employment may be terminated as set out in paragraph (b) of this Sub-clause.

(e) Main Roads may summarily dismiss an Employee on probation who is deemed guilty of gross misconduct, peculation or theft and the Employee shall not be entitled to any notice or payment in lieu of notice.

(f) The provisions of this sub-clause do not apply in the case of employees eligible to be members of the following Unions:

- Communication, Electronics, Engineering and Plumbing Union.
- Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia.
- Federated Liquor and Allied Industries Employees Union of Australia, W.A Branch Union of Workers.
- Australian Manufacturing Workers Union
- Western Australian Builders' Labourers, Painters & Plasterers Union of Workers.

9.2. (a) No Employee shall ordinarily leave the employ of Main Roads until the expiration of one calendar month's written notice of the Employee's intention to do so, without the approval of Main Roads. Notwithstanding any of the other provisions contained in this clause a lesser period of notice may be negotiated between Main Roads and the Employee. An employee who fails to give the required notice shall forfeit one weeks pay, which maybe withheld from monies due on termination.

(b) Except as hereinafter provided, one month's written notice shall be given by Main Roads to an Employee other than an Employee serving a probationary period whose services are no longer required. Provided Main Roads may pay the employee one months pay in lieu of the said notice. Notwithstanding any of the other provisions contained in this clause a lesser period of notice may be negotiated between Main Roads and the employee.

(c) Notwithstanding the provisions of Sub-clause (b) hereof, Main Roads may summarily dismiss an Employee for gross misconduct, peculation or theft, committed during the course of or in connection with the performance of the Employee's duties, in accordance with Clause 13 (Discipline) of this Appendix.

(d) If the Association/Union considers that the Employee has been wrongfully dismissed the matter may be referred to a Board of Reference if constituted under the parent Award and/or to the WAIRC as the case maybe for settlement.

(e) An Employee, having attained the age of 55 years shall be entitled to retire from the employ of Main Roads.

9.3. (a) Notwithstanding the other provisions contained in this clause Main Roads may employ Employees for a fixed term contract subject to Clause 11—Fixed Term Contract Provisions of this Appendix.

(b) Employees appointed for a fixed term contract shall be advised in writing of the terms of appointment and such advice shall specify the dates of commencement and termination of employment.

(c) The provisions of paragraphs (a), (b), (c) and (d) of Subclause 9.2 of this clause shall also apply in respect to fixed term contract Employees.

9.4. An Employee may be directed to carry out such duties as are within the limits of the Employee's skill, competence and training as agreed between the parties and are incidental and peripheral to their main task or function. Provided that the work performed is recognised as being consistent with a higher classification, it will be paid in accordance with the appropriate provisions of the Parent Award.

10.—COPIES OF MAIN ROADS WESTERN AUSTRALIA COMMON CONDITIONS APPENDIX

Every employee shall be entitled to have access to a copy of this Appendix. Sufficient copies shall be made available by Main Roads for this purpose and shall be located in each of Main Roads' premises.

11.—FIXED TERM CONTRACTS

11.1. Main Roads may only employ persons on fixed term contracts in accordance with the following:

(a) To meet peak work load needs: contracts will not exceed six months but maybe extended for up to a further six months with the prior written agreement of the Association/Union; or,

(b) To provide specialist skills not possessed by Main Roads: contracts will not exceed twelve months but maybe extended for up to a further twelve months with the prior written agreement of the Association/Union; or,

(c) To cover employees on periods of leave either with or without pay. For the duration of the period of leave.

Note: In the context of paragraph (b) of this sub-clause specialist skills does not include the normal range of skills required by Main Roads but are additional skills that Main Roads may require from time to time for short periods but not on a permanent ongoing basis.

11.2. Fixed term contracts are not to be used to engage people if permanent employees are available to act in jobs when other employees proceed on leave.

11.3. Prior to any fixed term contract being entered into between Main Roads and a person, Main Roads shall obtain the agreement of the Association/Union unless alternative arrangements have been entered into with that Association/Union. Associations/Unions will not unreasonably withhold permission for Main Roads to engage a person on a fixed term contract as provided for in Sub-clause 11.1.

11.4. The provisions of Sub-clause 11.1 may be varied with the written agreement of the Association/Union.

12.—PART-TIME EMPLOYMENT

12.1. Part time work will be within the average hours per week of fifteen to thirty. However this range may be varied by agreement with the Association/Union.

12.2. (a) Each permanent part-time arrangement shall be confirmed by Main Roads in writing and will include the following specifications:

(i) the agreed period of the arrangement; and

(ii) the hours and days to be worked by the Employee, including starting and finishing times, which shall hereinafter be referred to as "ordinary working hours".

(b) Main Roads shall give an Employee one (1) month's notice of any proposed permanent variation to that Employee's ordinary working hours, provided that Main Roads shall not vary the Employee's total weekly hours of duty without the Employee's prior written consent, a copy of which shall be forwarded to the appropriate Association/Union.

(c) Notwithstanding paragraph (b) of this Sub-clause whenever agreement with an employee in writing is reached for a temporary variation to an Employee's ordinary working hours, time worked during the normal hours as set out in the relevant award is not to be regarded as overtime but an extension of the contract hours and should be paid at the normal rate of pay.

12.3. The overtime provisions of the main award shall apply to all time worked outside the ordinary working hours prescribed by paragraph (a) of Sub-clause 12.2 of this clause unless an arrangement pursuant to paragraph (b) or (c) of Sub-clause 12.2 of this clause is in place.

12.4. An Employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time pay including increments where applicable dependent upon time worked. The pay shall be calculated in accordance with the following formula:

$$\frac{\text{hrs worked per fortnight}}{\text{full time hrs per fortnight}} \times \frac{\text{full time fortnightly pay}}{1}$$

Tea attendants shall receive an additional 15% on top of the above formula.

12.5 Employees are entitled to the public holidays prescribed in Clause 30 of this appendix without variation of the Employee's fortnightly pay provided the holidays occur on a day which is normally worked.

12.6. (a) Except for leave covered in Sub-clauses 12.7, 12.8 and 12.9 an employee shall be granted paid leave including annual leave loading in accordance with their main award. Hours of leave applicable shall be calculated as follows in lieu of that provided in the main award.

$$\frac{\text{Avg Ord.hrs worked/fn}}{\text{Ordinary f.t. hrs / fortnight}} \times \frac{\text{f.t. entitlement for hrs of relevant paid leave}}{1}$$

(b) Part time employees are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week.

(c) Travelling time shall be calculated on a pro-rata basis according to the usual hours worked per fortnight.

12.7. An Employee shall proceed on long service leave for 13 weeks as provided for in their main award. Payment made for long service leave granted to an Employee in respect of such part-time service shall be adjusted according to the hours worked by the Employee during that part-time service, subject to the following:

(a) If an Employee consistently worked on a part-time basis for a regular number of hours during the whole of the Employee's qualifying service, the Employee shall continue to be paid the salary determined on that basis during the long service leave.

(b) If an Employee has worked a varying number of weekly hours during the period of qualifying service, the payment for long service leave granted in respect of part-time service should be calculated on a pay which bears to the full-time pay of the position occupied by the Employee when taking leave the same proportion that the average hours worked when employed part-time bears to the normal weekly hours of a full-time Employee. i.e.

$$\frac{\text{Ave Ord Hrs Worked/fortnight}}{\text{Ordinary full time hrs/fortnight}} \times \frac{\text{Full-time Fortnightly Pay}}{1}$$

(c) Where pay in (b) is less than the employees current pay the employee may take a proportionally lesser period of long service leave on their current pay—according to the following formula;

$$\text{Period of LSL on current pay} = \frac{\text{Pay calculated for LSL}}{\text{Current pay}} \times \frac{13}{1}$$

12.8. Subject to Clauses 24 (Trade Union Training Leave) and 25 (Training with the Defence Force Reserves Leave), of this Appendix, part-time Employees shall receive the same entitlement as full-time Employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

12.9 Subject to Clause 29 (Study Leave) part-time Employees are entitled to study leave on the same basis as full-time Employees.

12.10 Employees shall be entitled to increments if appropriate as provided for in the Parent Award.

12.11. (a) Where a full-time Employee is permitted, at their initiative, to work part-time for a specified period no greater than 12 months, that Employee has a right, upon written application to revert to full-time hours in that position, or a position of equal classification, as soon as is deemed practicable by Main Roads, but no later than the expiry of the agreed period.

(b) A full-time Employee who is permitted at their initiative to work part-time for an unspecified period or a period greater than twelve months may apply to revert to full-time hours in that position but only as soon as deemed practicable by Main Roads.

This should not prevent the transfer of said Employee to another full-time position at a classification commensurable to that of their previous full-time position.

(c) When a position becomes part time at the initiative of Main Roads an existing full time occupant may elect to;

- Undertake the work for a specified period;
- Undertake the work for an unspecified period;
- Be transferred to an equivalent position.

If the employee elects to undertake part time work they may revert to full time work as soon as practicable.

(d) Part time employees are entitled to apply for transfer or promotions to either full time or other part time positions.

12.12. The number or proportion of part-time Employees employed by Main Roads shall not exceed any number or proportion that may be agreed in writing between the applicable Association/Union and Main Roads.

13.—DISCIPLINE

13.1. Where an allegation of misconduct or inappropriate work behaviour is made against an employee, the matter shall be investigated and subsequently acted upon in accordance with the provisions of this clause.

13.2. Through all investigations and actions Main Roads shall ensure that the principles of fairness, equity and natural justice are adhered to.

13.3. Employees shall be able to elect to have in attendance at any meetings with Main Roads either their Association/ Union or representative of their choice.

13.4. Where it is determined that action is to be taken against an employee, the following options are available to Main Roads having regard to the level of seriousness of the alleged offence/behaviour.

(a) The issuing of a written warning;
(b) Counselling the employee;
(c) Suspension with pay (this would only apply where the matter needs further investigation and it is inappropriate for the employee to remain at work);
(d) Termination of the employees services;
(e) Summary dismissal;
(f) Other alternative arrangements as agreed with the employee and their Association/Union.

13.5. Main Roads except where required by an external authority shall advise employees in advance of the commencement of any investigations into their alleged misconduct or inappropriate work behaviour.

13.6. Main Roads except where required by an external authority shall on request provide employees with copies of all documentation relevant to their alleged misconduct or inappropriate work behaviour.

13.7. Employees or their Association/Union may appeal to the Western Australian Industrial Relations Commission in the case of termination or summary dismissal.

13.8. In lieu of the provisions of this clause, the provisions of Clause 37—Complaints and Charges Against Employees from the Engineering Trades (Government) Award 1967 shall apply to employees who are eligible to be members of the Australain Manufacturing Workers Union.

13.9. The provisions of this clause do not apply in the case of matters covered by Clause 14 (Dispute Settlement) unless a dispute exists or Clause 15 (Grievance Settlement) applies.

14.—DISPUTE SETTLEMENT

14.1. *Preamble*: Main Roads and the Associations/Unions recognise that the parties to this Appendix have differing roles and responsibilities. The Associations/ Unions recognise that Main Roads has a statutory and public responsibility to manage the provision of the major road network for the State of Western Australia, and that it is essential for the welfare, convenience and employment opportunities of the population, for the smooth operation and prosperity of its industry and commerce, and for the purpose of ensuring the economic development of the State, to provide roads, bridges and associated services without any avoidable interruption. Main Roads recognises that the Associations/Unions have the right to take appropriate action to protect and improve the working conditions and remunerations of their members. In recognising these differing roles and responsibilities the parties accept the need for a dispute settlement procedure and commit themselves to the following to minimise disputes.

14.2. *Commitment of Main Roads its employees and the Associations/Unions*:

Main Roads commits itself to expeditiously deal with any difference that may arise between itself and the Associations/ Unions or any of them and their members. The Associations/ Unions and their members commit themselves to resolve any differences with Main Roads by consultation and negotiation.

14.3. *Dispute Settlement Procedure*: Any questions, disputes or difficulties arising under this Industrial Agreement will be dealt in according with the following:

(a) Site discussions
  (i) The employee and/or accredited Association/ Union representative shall discuss the matter with the employees immediate supervisor.
  (ii) If the matter cannot be resolved satisfactorily at this level it shall be referred by either party to a senior Main Roads employee for resolution.
  (iii) If the matter still remains unresolved the employee or their Association/Union representative shall be provided with facilities to make contact with an official of the relevant Association/Union and the senior Main Roads employee shall contact a Main Roads Industrial Relations Officer.

(b) Formal procedure: These procedures are to be followed in the event that the matter is not resolved under sub-clause (a).
  (i) As early as practicable meeting(s) are to be held either on or off site as appropriate between the parties.
  (ii) If the matter cannot be resolved under (i) either party may refer it to the relevant Industrial Relations Commission for resolution.

14.4 Conditions

(a) The parties commit themselves to maintain the status quo and not take any industrial action during the course of the dispute settlement procedure set out in Sub-Clause 14.3. hereof.
(b) Subject to prior consultation between the parties this procedure shall not apply to industrial action taken on a State or Nation wide basis as a result of a formal decision of either the Trades and Labour Council of Western Australia or the Australian Council of Trade Unions. This in no way means that Main Roads endorses such action.

14.5. Other

(a) Industrial action in relation to this clause does not include local stopwork meetings of short duration to enable full time officials to report back on union business. As far as practicable such meetings shall occur outside of normal working hours but may with prior agreement by Main Roads be held during normal working hours.
(b) Main Roads are to be notified of such meetings at least 24 hours, or such lesser time as maybe agreed, prior to the meetings occurring.

14.6. The provisions of this clause do not apply in the case of matters covered by Clause 13 (Discipline) or Clause 15 (Grievance Settlement).

15.—GRIEVANCE SETTLEMENT

15.1. When an employee considers they have a grievance the matter shall be acted on in accordance with the provisions of this clause.

15.2. The types of grievances that can be resolved under Sub-clause 15.1 are as follows;

(a) EEO Grievances:
- racial harassment;
- sexual harassment;
- discrimination or harassment due to a persons sex, marital status, pregnancy, race, impairment, age, family responsibility or family status, and political or religious conviction.

(b) Health and Safety Grievances
- Safety issues in the workplace
- Hazardous substances in the workplace
- Protective clothing and equipment

(c) General Grievances: This covers a variety of grievances that can occur from time to time in the workplace excluding the following:
- Those referred to in (a) and (b) above.
- Those referred to in Clauses 13 (Discipline) and 14 (Dispute Settlement).
- Those that have a formal appeal process such as grievances relating to promotions or classifications.

15.3. Grievances will be handled in a manner which ensures that they are resolved promptly, confidentially and in accordance with legislative requirements.

15.4. Grievances will be considered seriously and sympathetically and in all cases the utmost care will be taken to handle them impartially by recognising the rights of all parties.

15.5. An employee who considers they have grounds for a grievance may submit the grievance as follows:

(a) EEO Grievances—To their line manager, an authorised Grievance Officer or an Advisory Services Officer.

(b) Health and Safety Grievances—To their line manager, their Health and Safety Representative or an Advisory Services Officer.

(c) General Grievances—To their line manager in the first instance and if not resolved to be submitted in writing to their branch manager.

15.6. The grievance should be reported as soon as practicable after the grievance has arisen so as to enable the line manager or other authorised person to remedy the grievance rapidly and as near as possible to the point of origin.

15.7. The employee may request the assistance or presence of an Association/Union representative or other person of their choice as provided for in Main Roads procedures at any stage of the grievance resolution process.

15.8. An employee is not to be subject to any retaliation because they raised a grievance.

15.9. The provisions of this clause do not apply in the case of matters covered by Clause 13 (Discipline) or Clause 14 (Dispute Settlement).

16.—ADOPTION LEAVE

16.1. *Nature of leave*—Adoption leave is unpaid leave.

16.2. *Definition*—For the purposes of this Section:

(a) *'Employee'* includes a part-time employee and fixed term contract employee up until the end of their contract period but does not include an employee engaged upon casual work.

(b) *'Child'* means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

(c) *'Relative adoption'* occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(d) *'Spouse'* includes de facto spouse.

(e) *'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 Clause 19, or

(iii) any period of leave or absence authorised by Main Roads under this appendix or by the main award.

16.3. Eligibility

An employee, upon production to Main Roads of the documentation required by Sub-clause 16.4 hereof shall be entitled to adoption leave, the total of which shall not exceed 52 weeks in the following circumstances:

(a) a period of up to three weeks at the time of the placement of the child;

(b) a period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employees spouse in relation to the same child except in the circumstances where both adoptive parents need to go overseas to complete the adoption. This entitlement of up to 52 weeks shall be reduced by any period of leave taken pursuant to paragraph (a) hereof;

(c) under special circumstances Main Roads may approve leave concurrent with the employee spouse or in more than one period.

16.4. *Certification*—Before taking adoption leave the employee must produce to Main Roads:

(a) (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

16.5. Notice requirements

(a) Upon receiving notice of approval for adoption purposes an employee shall notify Main Roads of such approval and within two months of such approval shall further notify Main Roads of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

(b) An employee who commences employment with Main Roads after the date of approval for adoption purposes shall notify Main Roads thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take.

(c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to Main Roads of such date and of the date of the commencement of any period of leave to be taken under paragraph 16.3(a) hereof.

(d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph 16.3. (b) hereof give notice in writing to Main Roads of the date of commencing leave and the period of leave to be taken.

(e) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (c) and (d) 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.

16.6. *Variation of period of adoption leave*

(a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under Sub-clause (3) hereof:

(i) the period of leave taken under paragraph 16.3 (b) 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;

(ii) the period may be further lengthened by agreement between Main Roads and the employee.

(b) The period of adoption leave taken under paragraph 16.3 (b) hereof may, with the consent of Main Roads, 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.

16.7. *Cancellation of adoption leave*

(a) Adoption leave applied for but not commenced shall be cancelled should the placement of the child not proceed.

(b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify Main Roads forthwith and Main Roads shall nominate a time not exceeding four weeks from receipt of notification for the employees resumption of work.

16.8. *Special Leave*

Main Roads shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days plus an additional day for employees working and residing in rural locations 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 Main Roads may require the employee to take such leave in lieu of special leave.

16.9. An employee proceeding on adoption leave may elect to utilise:

(a) accrued annual leave

(b) accrued long service leave

For the whole or part of the period referred to in Sub-clause 16.3 of this clause.

(c) The periods of leave referred to paragraphs (a) and (b) of this Sub-clause which are utilised, shall be paid leave.

(d) An employee may extend her period of adoption leave by taking accrued annual, long service leave or, on application, a further period of leave without pay

(e) 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.

16.10 Effect of adoption leave on employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

16.11 *Termination of employment*

(a) 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.

(b) Main Roads shall not terminate the employment of an employee on the ground of the employees application to adopt a child or absence on adoption leave, but otherwise the rights of Main Roads in relation to termination of employment are not hereby affected.

16.12. *Return to work after adoption leave*

(a) An employee shall confirm the intention of returning to work by notice in writing to Main Roads given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph 16.3 (b) hereof.

(b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under Clause 18 the position held immediately before commencing such part-time work.

(c) 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.

16.13. *Replacement Employees*

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(b) Before Main Roads engages a replacement employee Main Roads shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before Main Roads engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this clause, Main Roads shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Nothing in under this clause shall be construed as requiring Main Roads to engage a replacement employee.

17.—MATERNITY LEAVE

17.1. *Nature of Leave*—Maternity leave is unpaid leave.

17.2. *Definitions*—for the purpose of this Section:

(a) *'Employee'* includes a part-time employee and fixed term contract employee up until the end of their contract period but does not include an employee engaged upon casual work.

(b) *'Child'* means a child of the employee under the age of one year.

(c) *'Spouse'* includes a de facto or a former spouse.

(d) *'Continuous service'* means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause,

(ii) any period of part-time employment worked in accordance with Clause 19, or

(iii) any period of leave or absence authorised by Main Roads or by this appendix or the main award.

17.3. *Eligibility for Maternity Leave*

(a) An employee who becomes pregnant, upon production to Main Roads of the certificate required by Sub-clause 17.4. 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 employees spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

Subject to Sub-clause 17.6. and 17.9. hereof the period of maternity leave shall be unbroken.

(b) Under special circumstances Main Roads may approve leave concurrent with the employee spouse or in more than the one period.

17.4. Certification

At the time specified in Sub-clause 17.5 the employee must produce to Main Roads a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement

17.5. Notice Requirements

(a) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to Main Roads the certificate referred to in paragraph 17.4.

(b) An employee shall give not less than four weeks notice in writing to Main Roads of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.

(c) The minimum period of absence on maternity leave shall commence 6 weeks before the expected date of birth and end 6 weeks after the day on which the birth has taken place, however an employee may apply to Main Roads to reduce this period provided their application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume their normal duty within this minimum period.

(d) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

17.6. Transfer to a safe job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at their present work, the employee shall, if Main Roads deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may or Main Roads may require the employee to take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of Sub-clauses 17.7-10 hereof.

17.7. Variation of period of maternity leave

(a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under Sub-clause 17.3 hereof:

(i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between Main Roads and the employee.

(b) The period of maternity leave may 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.

17.8. Cancellation of maternity leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by Main Roads which shall not exceed four weeks from the date of notice in writing by the employee Main Roads that she desires to resume work.

17.9 *Special maternity leave and sick leave*

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then:

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work.

(c) For the purposes of Sub-clauses 17.10, 17.11, 17.12 and 17.13(b) hereof, maternity leave shall include special maternity leave.

17.10. *Maternity leave and other leave entitlements*

An employee proceeding on maternity leave may elect to utilise:

(a) accrued annual leave

(b) accrued long service leave—For the whole or part of the period referred to in Sub-clause 17.3 of this clause.

(c) The periods of leave referred to paragraphs (a) and (b) of this Sub-clause which are utilised, shall be paid leave.

(d) An employee may extend her period of maternity leave by taking accrued annual, long service leave or, on application, a further period of leave without pay.

(e) 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.

17.11 *Effect of maternity leave on employment*

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

17.12 *Termination of employment*

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) Main Roads 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 Main Roads in relation to termination of employment are not hereby affected.

17.13. *Return to work after maternity leave*

(a) An employee shall confirm her intention of returning to work by notice in writing to Main Roads given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (a) 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 Sub-clause 17.6 hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time as provided for under Clause 18 of this appendix 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.

17.14. *Replacement employees*

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before engaging a replacement employee Main Roads shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under this clause, Main Roads shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Nothing in this clause shall be construed as to require Main Roads to engage a replacement employee.

18.—PARENTAL LEAVE—PART TIME WORK

18.1. *Definitions*—for the purpose of this Section**:**

(a) *'Male employee'* means an employed male employee who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

(b) *'Female employee'* means an employed female employee who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

(c) *'Spouse'* includes a de facto spouse.

(d) *'Former position'* means the position held by a female or male employee immediately before proceeding on leave or part-time employment under Clauses 16, 17, 18 or 19 hereof 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.

(e) *'Continuous service'* means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with Clause 17, 18 or 20;

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by Main Roads under this appendix or by the main award.

18.2. *Entitlement*—With the agreement of Main Roads:

(a) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(b) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(c) A female employee may work part-time in one or more periods of any time after the date of birth of the child until its second birthday.

(d) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

18.3. *Return to former position*

(a) An employee at the expiration of the period of such part-time employment has the right to return to their former position.

18.4. *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 the continuity of service or employment.

18.5. *Conditions of Part Time work*

Subject to the provisions of this clause part-time employment shall be in accordance with Clause 12 (Part Time Employment) of this Appendix.

18.6. *Termination of employment*

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 Main Roads 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.

18.7. *Inconsistent Appendix provisions*

An employee may work part-time under this clause notwithstanding any other provision of this Appendix which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

(a) Limiting the number of employees who may work part-time;

(b) Establishing quotas as to the ratio of part-time to full-time employees;

(c) Prescribing a minimum or maximum number of hours a part-time employee may work; or,

(d) Requiring consultation with, consent of monitoring by a union;

(c) and such provisions do not apply to part-time work under this clause.

18.8. *Replacement Employees*

(a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this clause.

(b) Before Main Roads engages a replacement employee under this Sub-clause, Main Roads shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph 18.1.(d).

(d) Nothing in this clause shall be construed as requiring Main Roads to engage a replacement employee.

(e) Sub-clauses 18.5 and 18.7 of this Clause also applies to replacement employees.

19.—PATERNITY LEAVE

19.1. *Nature of leave*—Paternity leave is unpaid leave.

19.2. *Definitions*—for the purpose of this Section:

(a) *'employee'* includes a part-time employee or a fixed term contract employee during the period of the contract but does not include an employee engaged upon casual work.

(b) *'Maternity leave'* means leave of the type provided for in Clause 17 (and includes special maternity leave) whether prescribed in an award or otherwise.

(c) *'Child'* means a child of the employee or the employees spouse under the age of one year.

(d) *'Spouse'* includes a de facto or a former spouse.

(e) *'Continuous service'* means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause,

(ii) any period of part-time employment worked in accordance with clause 18; or

(iii) any period of leave or absence authorised by Main Roads or by this appendix or by the main award.

19.3. *Eligibility for paternity leave*

A male employee, upon production to Main Roads of the certificate required by Sub-clause 19.4. shall be entitled to a period of up to 52 weeks of paternity leave, in the following circumstances:

(a) an unbroken period of up to one week at the time of confinement of their spouse;

(b) 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 and shall not be taken concurrently with that maternity leave.

(c) Under special circumstances Main Roads may approve leave concurrent with the spouse or in more than two periods.

19.4. *Certification*

At the time specified in Sub-clause 19.5 the employee must produce to Main Roads 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;

19.5. *Notice requirements*

(a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give Main Roads

notice in writing stating the dates on which he proposed to start and finish the period or periods of leave and product the certificate required in Sub-clause 19.4 hereof.

(b) The employee shall not be in breach of this Subclause as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The employee shall immediately notify Main Roads of any change in the information provided pursuant to Sub-clause 19.4 hereof.

19.6. *Variation of period of paternity leave*

(a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under Sub-clause (3) hereof:

(i) the period of paternity leave provided by paragraph 19.3(b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between Main Roads and the employee.

(b) The period of paternity leave taken under paragraph 19.3(b) hereof may, with the consent of Main Roads, 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.

19.7. *Cancellation of paternity leave*

Paternity leave, applied for under paragraph 19.3(b) hereof but not commenced shall be cancelled when the pregnancy of the employees spouse terminates other than by the birth of a living child.

19.8. *Paternity leave and other leave entitlements*

An employee proceeding on paternity leave may elect to utilise:

(a) Accrued annual leave

(b) Accrued long service leave

For the whole or part of the period referred to in Sub-clause 19.3 of this clause.

(c) The periods of leave referred to paragraphs (a) and (b) of this Sub-clause which are utilised, shall be paid leave.

(d) An employee may extend their period of paternity leave by taking accrued annual, long service leave or, on application, a further period of leave without pay.

(e) 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.

19.9. *Effect of paternity leave on employment*

Subject to this clause , 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.

19.10. *Termination of employment*

(a) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

(b) Main Roads shall not terminate the employment of an employee on the ground of their absence on paternity leave, but otherwise the rights of Main Roads in relation to termination of employment are not hereby affected.

19.11. *Return to work after paternity leave*

(a) An employee shall confirm his intention of returning to work by notice in writing to Main Roads given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph 19.3. (b) hereof.

(b) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which they held immediately before proceeding on paternity leave or in relation to an employee who has worked part-time under Clause 20 to the position they held immediately before commencing such part-time work.

(c) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, they shall be entitled to a position as nearly comparable in status and pay to that of their former position.

19.12. *Replacement Employee*

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(b) Before engaging a replacement employee Main Roads shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under this clause, Main Roads shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Nothing in this clause shall be constructed as requiring Main Roads to engage a replacement employee.

20.—ASSOCIATION/UNION BUSINESS LEAVE

20.1. (a) Main Roads shall grant paid leave during ordinary working hours to an Employee:

(i) who is required to give evidence before any Industrial Tribunal;

(ii) who as an Association/Union nominated representative is required to attend negotiations and/or conferences between the Association/Union and Main Roads;

(iii) when prior agreement between the Association/Union and Main Roads has been reached for the Employee to attend official Association/Union meetings preliminary to negotiations or industrial hearings;

(iv) who as an Association/Union nominated representative is required to attend joint Association/Union/management consultative committees or working parties.

(b) The granting of leave pursuant to paragraph (a) of this Sub-clause shall only be approved,

(i) where an application for leave has been submitted by an Employee a reasonable time in advance;

(ii) for the minimum period necessary to enable the Association/Union business to be conducted or evidence to be given;

(iii) for those Employees whose attendance is essential;

(iv) when the operation of the organisation is not being unduly affected and the convenience of Main Roads impaired.

20.2. (a) Leave of absence provided under this clause will be granted at the ordinary rate of pay.

(b) Main Roads shall not be liable for any expenses associated with an Employee attending to Association/Union business.

(c) Leave of absence provided under this clause shall include any necessary travelling time in normal working hours.

20.3. (a) Nothing in this clause shall diminish the existing arrangements relating to the granting of paid leave for Association/Union business.

(b) The provisions of this clause shall not apply to special arrangements made between the parties which provide for unpaid leave for Employees to conduct Association/Union business.

20.4. The provisions of this clause shall not apply when an Employee is absent from work without the approval of Main Roads.

21.—COUNCIL LEAVE

Employees who are elected members of local councils may be granted paid leave to attend normal Council meetings and standing Committee meetings held during ordinary working hours. Employees may take the minimum time necessary to attend council meetings.

The Line Manager should advise the Personnel Officer of the name and position of any employee who has been elected to council. This information should then be noted on the employee's personal file.

Under no circumstances will leave be approved if the employee's absence will necessitate Main Roads incurring additional expense.

22.—INTERNATIONAL SPORTS EVENTS LEAVE

Special paid leave may be granted by Main Roads to an employee chosen to represent Australia as a competitor or official at a sporting event under the following criteria:

- it is a recognised international amateur sport;
- it is a world or international regional competition;
- no contribution is made by the sporting organisation towards the normal salary of the employee.

Main Roads will liaise with the relevant Government organisation when determining:

- whether the application meets the above criteria
- the period of leave to be granted

23.—LEAVE WITHOUT PAY

23.1. Where Main Roads is satisfied that there is sufficient cause for doing so, they may grant an Employee leave of absence without pay for any period provided that:

(a) the work of Main Roads is not inconvenienced; and

(b) all other leave credits of the Employee are exhausted.

23.2. For the purposes of this clause "continuous service", except where an increment is payable according to age, shall not include:

(a) any period exceeding 14 calendar days during which an employee is absent on leave without pay. In the case of leave without pay which exceeds 14 calendar days the entire period of such leave without pay is excised in full;

(b) any period which exceeds 6 months in one continuous period during which an employee is absent on Workers' Compensation. Provided that only that portion of such continuous absence which exceeds 6 months shall not count as "continuous service";

(c) Any period which exceeds 3 months in one continuous period during which an employee is absent on sick leave without pay. Provided that only that portion of such continuous absence which exceeds 3 months shall not count as "continuous service".

23.3. Main Roads may grant an employee leave without pay to undertake full time study, subject to a yearly review of satisfactory performance. Unless Main Roads otherwise determines any leave granted under this sub-clause shall not count as qualifying service for leave purposes.

23.4. Subject to the provisions of Sub-clause 23.1 of this clause, Main Roads may grant an Employee who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay. Leave without pay for this purpose shall count as qualifying service for all purposes except annual leave.

24.—TRADE UNION TRAINING LEAVE

24.1. Subject to the provisions of this clause:

(a) Main Roads shall grant paid leave of absence to Employees who are nominated by the Association/Union to attend short courses conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar Association/Union courses or seminars as from time to time approved by agreement between Main Roads and the Association/Union.

24.2. An Employee shall be granted up to a maximum of five days' paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten (10) days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

24.3. (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a public holiday or roster day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(c) Subject to Sub-clause 24.3(a), shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

24.4. The granting of leave pursuant to the provisions of Sub-clause 24.1 of this clause is subject to the operation of the organisation not being unduly affected and to the convenience of Main Roads.

24.5. (a) Any application by an Employee shall be submitted to Main Roads for approval at least four weeks before the commencement of the course, provided that Main Roads may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the Association/Union indicating that the Employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

24.6. A qualifying period of 12 months in State Government employment shall be served before an Employee is eligible to attend courses or seminars of more than a half day duration. Main Roads may, where special circumstances exist, approve an application to attend a course or seminar where an Employee has less than 12 months' Government service.

24.7. (a) Main Roads shall not be liable for any expenses associated with an Employee's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

25.—TRAINING WITH THE DEFENCE FORCE RESERVES LEAVE

25.1. Subject to Main Roads convenience, leave of absence may be granted by Main Roads to an Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction under the conditions contained in this clause.

25.2. (a) In order to attend at a camp for annual continuous obligatory training, an Employee may be granted one period of not exceeding ten working days on full pay in any period of 12 months commencing on and from July 1 in each year.

(b) If the Officer in charge of a unit certifies that it is essential for an Employee to be at the camp in an advance or rear party, a maximum of four (4) extra days on full pay may be granted in a 12 month period.

25.3. For attendance at one special school, class or course of instructions—

(a) in addition to the leave granted under Sub-clause 25.1 hereof, a period not to exceed 16 calendar days in any period of 12 months commencing on and from July 1, in each year may be granted provided that Main Roads must be satisfied that the leave required is for a special purpose and not for a further routine camp;

(b) this leave may, at the option of the Employee, be granted from annual recreation leave due;

(c) if the leave is not taken from accrued annual leave, salary during the period shall be at the rate of difference between the normal remuneration of the Employee and the defence force payment to which the Employee is entitled if this does not exceed normal pay from Main Roads. In calculating the pay differential, pay for Saturdays, Sundays, and public

holidays prescribed in Clause 30 (Holidays) of this Appendix and special roster days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the Employee;

(d) leave without pay shall be granted if the defence force payments exceed the normal pay of the Employee.

25.4. (a) Application for leave of absence for the above reasons shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the Employee shall furnish a certificate of attendance to Main Roads. Where leave of absence has been granted with pay at the rate of difference between normal remuneration and defence force payment, the Employee shall also furnish a detailed certificate of the defence force payment received.

(b) On written application, an Employee shall be paid salary in advance when proceeding on such leave.

(c) Where annual leave is not utilised for attendance at a special school or course the period shall be treated as leave without pay and then adjusted for the pay differential when the certificate of attendance and payment is received.

26.—WITNESS AND JURY SERVICE LEAVE

WITNESS LEAVE

26.1. An employee subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify their manager/supervisor.

26.2. Where an employee is subpoenaed or called as a witness to give evidence in an official capacity that employee shall be granted leave of absence with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness. If the employee is on any form of paid leave, the leave involved in being a witness will be reinstated. the employee is not entitled to be paid any witness fees but is entitled to travelling expenses.

26.3. An employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave with full pay entitlements. If the employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the employees civic duty. The employee is not entitled to be paid any witness fees but is entitled to travelling expenses.

26.4. An employee subpoenaed or called as a witness under any other circumstances other than specified in Sub-clauses 26.2. and 26.3. of this clause shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with award provisions.

JURY SERVICE LEAVE

26.5. An employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify their supervisor/manager.

26.6. An employee required to serve on a jury shall be granted leave of absence on full pay, but only for such period as is required to enable the employee to carry out their duties as a juror.

26.7. An employee granted leave of absence on full pay as prescribed in Sub-clause 26.5 of this clause is not entitled to be paid any juror's fees but is entitled to travelling expenses.

27.—EMPLOYEE DEVELOPMENT LEAVE

Employees may be granted Employee Development Leave to enable them to be informed of developments in their area of expertise subject to—

(a) the conference, seminar or short term study course being relevant to the employees area of expertise,

(b) the conference, seminar or short term study course being relevant to Main Roads needs, and

(c) Main Roads determining its contribution towards associated costs.

28.—ENGLISH LANGUAGE TRAINING LEAVE

28.1. Leave during normal working hours without loss of pay shall be granted to Employees who are unable to meet standards of communication to advance career prospects, or who constitute a safety hazard or risk to themselves and/or fellow workers, or are not able to meet the accepted production requirements of that particular occupation, to attend English training conducted by an approved and authorised Authority. The selection of Employees for training will be determined by consultation between Main Roads and the relevant Association/Union.

28.2. Leave will be granted to enable Employees selected to achieve an acceptable level of vocational English proficiency. In this respect the tuition content with specific aims and objectives incorporating the pertinent factors at Sub-clause 28.3 hereof shall be agreed between Main Roads and the relevant Association/Union and an approved Authority conducting the training.

28.3. Subject to appropriate needs assessment participation in training will be on the basis of up to 100 hours per Employee per year.

28.4. The agreed desired proficiency level will take account of the vocational needs of an employee in respect of communication, safety, EEO, welfare industrial relations, training and productivity within their current position as well as those positions to which they may be considered for promotion or redeployment.

29.—STUDY LEAVE

29.1. (a) Notwithstanding the provisions contained in this clause, at the discretion of Main Roads an employee may be granted time off with pay for part-time study purposes.

(b) Time off with pay may be granted up to a maximum of five hours per week including travelling time.

(i) where subjects of approved courses are available during normal working hours.

(ii) where approved study by correspondence is undertaken in remote or other locations lacking the required educational facilities or where the approved course is outside the State of Western Australia.

(c) External students based in remote locations, who are obliged to attend educational institutions for compulsory sessions during vacation periods, may be granted time off with pay including travelling time up to the maximum annual amount allowed to an employee in the metropolitan area.

(d) Employees shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

(e) In every case the approval of time off to attend lectures and tutorials will be subject to:

(i) Main Roads convenience;

(ii) the course being undertaken on a part-time basis;

(iii) Employees undertaking an acceptable formal study load in their own time;

(iv) Employees making satisfactory progress with their studies; and

(v) the course being relevant to the employees career in the authority and being of value to the State.

29.2. (a) For the purposes of this clause, the following shall be considered approved courses of study:

SCHOOL OR TAFE STUDIES

(i) TEE
(ii) Certificate Courses
(iii) Advanced Certificate Courses
(iv) Diploma Courses
(v) Associate Diploma Courses

UNIVERSITY

(i) First degree University courses.
(ii) Graduate University Diploma courses.
(iii) Post Graduate University Diploma courses.
(iv) Masters Degree or higher qualifications.

OTHER

(i) Courses recognised by the National Authority for the Accreditation of Translators and Interpreters.

(b) An employee who has completed a two year full-time Certificate through TAFE, is eligible for study leave to undertake a Diploma course. An employee who has completed a Diploma through TAFE, is eligible for study leave to undertake a degree course at a university. An employee who has completed a degree is eligible for study leave to undertake further higher courses.

(c) Main Roads may approve other degrees courses where relevant to an employees career.

29.3. For the purposes of this clause:

(a) an acceptable part-time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the employee's own time, except in special cases such as where the employee is in the final year of study and requires less time to complete the course, or the employee is undertaking the recommended part-time year or stage and this does not entail five hours' formal study;

(b) travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the employee's normal place of work.

29.4. Unless Main Roads otherwise approves, employees shall not be granted more than five hours per week off with pay.

29.5. Time off with pay for those who have failed a unit or units of study may be considered for one repeat year only.

29.6. (a) Main Roads is to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment, are required to undertake studies at a University or College of Advanced Education. Employees who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.

(b) This assistance does not include the cost of text books or Guild and Society fees.

(c) An employee who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

30.—HOLIDAYS

30.1. (a) The following days or the days observed in lieu shall, subject as hereinafter provided, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may taken as a holiday by arrangement between the parties in lieu of any of the days named in this sub-clause.

(b) When any of the days mentioned in paragraph (a) hereof fall on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

30.2. Whenever any holiday falls on an employee's ordinary working day and an employee is not required to work on such day the employee shall be paid for the ordinary hours the employee would have worked, for the work the employee would have performed on such a day if it had not been a holiday.

30.3. When an employee is off duty owing to leave without pay for sickness, including accidents on or off duty, except time for which the employee is entitled to claim sick pay, any holiday falling during such absence shall not be treated as a paid holiday.

30.4. Where an employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a holiday, as prescribed in this clause, an employee shall be entitled to a paid holiday on all such holidays.

30.5. Employees eligible to be members of the Association of Professional Engineer, Scientists and Managers Australia, the Community and Public Sector Union, SPSF Group (W.A.) Branch, Civil Service Association of W.A., or the Printing and Kindred Industries Union shall be entitled to two additional paid days leave per calendar year to those provided for at Subclause30.1(a). The two additional days can be taken in conjunction with annual leave or at any other time as agreed between the employee and their section head.

30.6. A casual employee shall not be entitled to payment for any holiday referred to in this clause.

31.—DISTRICT ALLOWANCE

31.1. For the purposes of this clause the following terms shall have the following meaning:

(a) *"dependant"* in relation to an Employee means:

(i) a spouse; or

(ii) where there is no spouse, a child or any other relative resident within the State who rely on the Employee for their main support; who does not receive a district or location allowance of any kind.

(b) *"partial dependant"* in relation to an Employee means:

(i) a spouse; or

(ii) where there is no spouse, a child or any other relative resident within the State who rely on the Employee for their main support; who receives a district or location allowance of any kind less than that applicable to an Employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

(c) *"spouse"* means an Employee's spouse including defacto spouse.

(d) *"defacto spouse"* means a person of the opposite sex to the Employee who lives with the Employee as the husband or wife of the Employee on a bona fide domestic basis, although not legally married to that person.

31.2. (a) For the purposes of this clause, the boundaries of the various districts shall be as described hereunder and as delineated on the plan at Schedule K of this Appendix.

(b) For the purposes of this clause, a district shall mean:

(i) The area within a line commencing on the coast; thence east along lat. 28 to a point north of Tallering Peak, thence due south to Tallering Peak; thence Southeast to Mt Gibson and Burracoppin; thence to a point Southeast at the junction of lat. 32 and long. 119; thence south along long. 119 to coast.

(ii) That area within a line commencing on the south coast at long. 119 then east along the coast to long. 123; then north along long. 123 to a point on lat. 30; thence west along lat. 30 to the boundary of No. 1 District.

(iii) The area within a line commencing on the coast at lat. 26; then along lat. 26 to long. 123; thence south along long. 123 to the boundary of No 2 District.

(iv) The area within a line commencing on the coast at lat. 24; thence east to the South Australian Border; thence south to the coast; thence along the coast to long. 123 thence north to the intersection of lat. 26; thence west along lat. 26 to the coast.

(v) That area of the State situated between the lat. 24 and a line running east from Carnot Bay to the Northern Territory.

(vi) That area of the State north of a line running east from Carnot Bay to the Northern Territory Border.

31.3. An Employee shall be paid a district allowance at the standard rate prescribed in Column II of Schedule H to this Appendix, for the district in which the Employee's headquarters is located. Provided that where the Employee's headquarters is situated in a town or place specified in Column III of Schedule I, the Employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of Schedule H.

31.4. An Employee who has a dependant shall be paid double the district allowance prescribed by Sub-clause 31.3 of this clause for the district, town or place in which the Employee's headquarters is located.

31.5. Where an Employee has a partial dependant the total district allowance payable to the Employee shall be the district allowance prescribed by Sub-clause 31.3 of this clause plus an allowance equivalent to the difference between the

rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

31.6. When an Employee is on approved annual recreational leave, the Employee shall for the period of such leave, be paid the district allowance to which he or she would ordinarily be entitled.

31.7. When an Employee is on long service leave or other approved leave with pay (other than annual recreational leave), the Employee shall only be paid district allowance for the period of such leave if the Employee, dependant/s or partial dependant/s remain in the district in which the Employee's headquarters are situated.

31.8. When an Employee leaves his or her district on duty, payment of any district allowance to which the Employee would ordinarily be entitled shall cease after the expiration of two weeks unless the Employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by Main Roads.

31.9. Except as provided in Sub-clause 31.8 of this clause, a district allowance shall be paid to any Employee ordinarily entitled thereto in addition to reimbursement of any travelling, transfer or relieving expenses or camping allowance.

31.10 Where an Employee whose headquarters is located in a district in respect of which no allowance is prescribed in Schedule I to this Appendix, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, then notwithstanding the Employee's entitlement to any such allowance provided by Clauses 38, 41 and 42 "The Government Officers Salaries Allowances and Conditions Award", the Employee shall be paid for the whole of such a period a district allowance at the appropriate rate prescribed by Sub-clauses 31.3, 31.4 or 31.5 of this clause, for the district in which the Employee spends the greater period of time.

31.11 When an Employee is provided with free board and lodging by Main Roads the allowance shall be reduced to two-thirds of the allowance the Employee would ordinarily be entitled to under this clause.

31.12 An Employee who is employed on a part-time basis shall be entitled to district allowance on a pro-rata basis. The allowance shall be determined by calculating the hours worked by the Employee as a proportion of the full-time hours prescribed by this award. That proportion of the appropriate allowance shall be payable to the Employee.

31.13 The rates expressed in Schedule I of this Appendix shall be adjusted every 12 months in accordance with the official "Consumer Price Index" for Perth as published by the Australian Bureau of Statistics.

The adjustment of rates shall be effective from the beginning of the first pay period to commence on or after the 1st day of July in each year.

32.—DIVING ALLOWANCE

An Employee who undertakes diving as part of their official duties or as a special duty which is sanctioned by Main Roads shall be paid an allowance as prescribed in Schedule I -Other Allowances for such diving. This allowance shall be in addition to any other payment for duties performed.

Provided that such allowance shall be paid only to an Employee engaged on diving when self contained underwater breathing apparatus or deep sea diving equipment is used.

33.—FLYING ALLOWANCE

An Employee who in the course of their official duties is required to fly in an aircraft other than those used in public air services, shall be paid an allowance as prescribed in Schedule I—Other Allowances for the following duties:

(a) observation and photographic duties,

(b) observation and photographic duties involving operations at heights of less than 304metres or in unpressurised aircraft at heights of more than 3,048metres.

34.—MOTOR VEHICLE ALLOWANCE

34.1. For the purposes of this clause the following expressions shall have the following meaning:

"a year" means 12 months commencing on the first day of July and ending on the thirtieth day of June next following.

"metropolitan area" means that area within a radius of 50 kilometres from the Perth Central Railway Station.

"southwest land division" means the southwest land division as defined by section 28 of the Land Act, 1933-1972 excluding the area contained within the metropolitan area.

"rest of the state" means that area south of 23.5 degrees south latitude, excluding the metropolitan area and the southwest land division.

"term of employment" means a requirement made known to the Employee at the time of applying for the position by way of publication in the advertisement for the position, written advice to the Employee contained in the offer for the position or oral communication at interview by the interviewing employee and such requirement is accepted by the Employee either in writing or orally.

"qualifying service" shall include all service in positions where there is a requirement as a term of employment to supply and maintain a motor vehicle for use on official business but shall exclude all absences which effect entitlements as provided by Schedule J.

34.2. (a) An Employee who is required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment shall be reimbursed in accordance with the appropriate rates set out in Part I of Schedule J for journeys travelled on official business and approved by Main Roads.

(b) An Employee who is reimbursed under the provisions of Sub-clause 34.2(a) of this clause will also be subject to the following conditions—

(i) for the purposes of Sub-clause 34.2(a) of this clause an Employee shall be reimbursed with the appropriate rates set out in Part 1 of Schedule J for the distance travelled from the Employee's residence to the place of duty and for the return distance travelled from place of duty to residence except on a day where the Employee travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the Day;

(ii) where an Employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Part 1 of Schedule J;

(iii) where an Employee does not travel in excess of 4,000 kilometres in a year an allowance calculated by multiplying the appropriate rate per kilometre by the difference between the actual distance travelled and 4,000 kilometres shall be paid to the Employee provided that where the Employee has less than 12 months' qualifying service in the year then the 4,000 kilometre distance will be reduced on a pro rata basis and the allowance calculated accordingly;

(iv) where a part-time Employee is eligible for a payment of an allowance under Sub-clause 34.2(b)(iii) of this clause such allowance shall be calculated on the proportion of total hours worked in that year by the Employee to the annual standard hours had the Employee been employed on a full-time basis for the year;

(v) an Employee who is required to supply and maintain a motor vehicle for use on official business is excused from this obligation in the event of their vehicle being stolen, consumed by fire, or suffering a major and unforeseen mechanical breakdown or accident, in which case all entitlement to reimbursement ceases while the Employee is unable to provide the motor vehicle or a replacement;

(vi) it shall be open to Main Roads to elect to waive the requirement that an Employee supply and maintain a motor vehicle for use on official business, but three months' written notice of the intention so to do shall be given to the Employee concerned.

34.3. (a) Subject to Sub-clause34.2 of this clause, an Employee who is not normally required to supply and maintain a motor vehicle as a term of employment and who is required to relieve an Employee required to supply and maintain a motor vehicle as a term of employment shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Part I of Schedule J for all journeys travelled on official business and approved by Main Roads where the Employee is required to use the vehicle on official business whilst carrying out the relief duty.

(b) For the purposes of paragraph(a) of this Sub-clause an Employee shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Part I of Schedule J for the distance travelled from the Employee's residence to place of duty and the return distance travelled from the place of duty to residence except on a day where the Employee travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.

(c) Where an Employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Part I of Schedule K.

(d) For the purpose of this Sub-clause the allowance prescribed in Sub-clause 34.2 (b) (iii), (iv) and (vi) of this clause shall not apply.

34.4. (a) An Employee who is not required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment, but when requested by Main Roads voluntarily consents to use the vehicle shall for journeys travelled on official business approved by Main Roads be reimbursed all expenses incurred in accordance with the appropriate rates set out in part 2 and 3 of Schedule J.

(b) For the purpose of paragraph(a) of this Sub-clause an Employee shall not be entitled to reimbursement for any expenses incurred in respect to the distance between the Employee's residence and headquarters and the return distance from headquarters to residence.

(c) Where an Employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in part 2 Schedule J if applicable.

34.5. In cases where Employees are required to tow Main Roads caravans on official business, the additional rate shall be three cents per kilometre. When Main Roads trailers are towed on official business the additional rate shall be two cents per kilometre.

35.—REMOVAL ALLOWANCE

35.1. When an employee is transferred to a new locality in the interests of Main Roads, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, the employee will as far as practicable be given no less than 14 days notice of the Transfer date and be reimbursed:

(a) The actual reasonable cost of conveyance for the employee and dependants.

(b) The actual cost (including insurance) of the conveyance of an employee's household furniture effects and appliances up to a maximum volume of 35 cubic metres, provided that a larger volume may be approved by Main Roads in special cases.

(c) An allowance of $493.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport furniture, effects and appliances. Provided that Main Roads is satisfied that the value of household furniture, effects and appliances moved by the employee is at least $2 946.00.

35.2. An employee who is transferred solely at their own request or on account of misconduct must bear the whole cost of removal unless otherwise determined by Main Roads prior to removal.

35.3. An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of one motor vehicle. If authorised by Main Roads to travel to a new locality in the employee's own motor vehicle, reimbursement shall be as follows:

(a) Where an employee will be required to supply and maintain a motor vehicle as a term of employment at the new headquarters, the employee shall be reimbursed the appropriate rate prescribed by Clause 34 (Motor Vehicle Allowance) of this Appendix for the distance necessarily travelled.

(b) Where the employee will not be required to maintain a motor vehicle for use on official business at the new headquarters reimbursement for the distance necessarily travelled shall be on the basis of one half of the appropriate rate prescribed by Clause 35.4. of this Appendix.

35.4. The employee shall, before removal is undertaken, obtain quotes from at least two (2) carriers which shall be submitted to Main Roads who may authorise the acceptance of the more suitable. Provided that the payment for a volume amount beyond 35 cubic metres is not to occur without the written approval of Main Roads having first been obtained.

35.5. Main Roads may, in lieu of conveyance, authorise payment of an amount not exceeding the maximum prescribed by paragraph (b) of Sub-clause 35.1 of this clause to compensate for loss in any case where an employee with prior approval of Main Roads, disposes of the employee's furniture, effects and appliances instead of removing them to the employee's new headquarters. Provided that such payment shall not exceed the sum which would have been paid if such furniture, effects and appliances had been removed by the cheapest method of transport available, and the volume was 35 cubic metres.

35.6. Where an employee is transferred to Government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $915.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage of the value of the furniture stored. An allowance under this Sub-clause shall not be paid for a period in excess of four years without the approval of Main Roads.

35.7. Receipts must be produced for all sums claimed.

35.8. New appointees shall be entitled to receive the benefits of this clause if they are required by Main Roads to participate in any training course prior to being posted to their respective offices. This entitlement shall only be available to employees who have completed their training and who incur costs when moving to their first posting.

36.—PAYMENT OF PAY

36.1. Pay shall be paid fortnightly by direct funds transfer to the credit of an account nominated by the Employee at a bank, building society or credit union approved by the Under Treasurer of the Western Australian State Government or an accountable employee. Provided that where such form of payment is impractical or where some exceptional circumstances exist, and by agreement between Main Roads and the Association/Union, payment may be made by cheque.

36.2. A fortnight's pay shall be computed in accordance with the following formula—

$$\text{PAY} = \frac{\text{annual salary}}{313} \times \frac{12}{1}$$

36.3. The hourly rate shall be computed as follows:

$$\frac{\text{fortnightly pay}}{\text{normal ordinary fortnightly hours}}$$

37.—PAY

37.1. Details of Annual and Fortnightly pays under this Appendix are set out in the attached schedules as follows:

SCHEDULE A:	Apprentices
SCHEDULE B:	Deleted
SCHEDULE C:	Deleted
SCHEDULE D:	Building Trades
SCHEDULE E:	Tea Attendants
SCHEDULE F:	Civil Service Association
SCHEDULE G:	Engineering Trades
SCHEDULE H:	District Allowance
SCHEDULE I:	Other Allowances

SCHEDULE J: Motor Vehicle Allowance
SCHEDULE K: District Allowance Boundaries

38.—ADJUSTMENT OF ALLOWANCES

38.1 The rates or specification for allowances expressed in clauses or schedules to this agreement shall, unless specified otherwise, be varied in line with adjustments made to the relevant Awards.

38.2 Any variation to rates or specifications to this agreement shall, unless specified otherwise, have the same operative date as the relevant variations to the relevant Awards.

SCHEDULE A: APPRENTICES

The weekly wage rate shall be a percentage, as hereunder, of the tradesperson's rate:

Four Year Term	%
First Year	42
Second Year	55
Third Year	75
Fourth Year	88
Three and a Half Year Term	
First Six Months	42
Next Year	55
Next Following Year	75
Final Year	88
Three Year Term	
First Year	55
Second Year	75
Third Year	88

For the purposes of this Schedule, "Tradesperson's Rate" means the rate of pay prescribed for an employee classified as Engineering Tradesperson C10 Level 1 in Schedule G of this document.

SCHEDULE B: DELETED

SCHEDULE C: DELETED

SCHEDULE D: BUILDING TRADES

		Annual Pay—$	F/nightly Pay—$
Level 3	1st Year	22580	865.68
	2nd Year	22877	877.08
	3rd Year	23164	888.08
Level 4	1st Year	24434	936.78
	2nd Year	24732	948.18
	3rd Year	25019	959.20
Level 5	1st Year	25662	983.84
	2nd Year	25959	995.24
	3rd Year	26247	1006.26
Level 6	1st Year	26888	1030.84
	2nd Year	27183	1042.16
	3rd Year	27473	1053.28
Level 7	1st Year	28103	1069.13
	2nd Year	28399	1080.39
	3rd Year	28688	1091.43

Tool Allowance	Annual Allowance—$	Fortnightly Allowance—$
a. Bricklayers	694	$26.61
b. Carpenters & Joiners	967	$37.08
c. Painters	239	$9.16

Allowance for Lost Time: Thirteen Days' sick leave and follow the job per fortnight.

An employee whose employment is terminated through no fault of their own and who has not completed nine months' continuous service with his employer shall, for each week of continuous employment with Main Roads, immediately prior to their termination of employment be paid the lost time allowance prescribed hereunder less any payments made to them in respect of sick leave during that employment:

(a) Bricklayers, Carpenters, Joiners, Painters = $71.56 per fortnight.

Disabilities Allowance (Per Fortnight): $33.40

(a) Subject to the provisions of paragraph (b), of this Sub-clause an allowance of **$33.40** shall be paid to all employees excepting employees who are employed for the major portion of any week in or about a permanent maintenance depot or who are usually employed in or about Main Roads' business when an employee coming within the exception is engaged on the erection or demolition of a building exceeding 25 square metres in floor area.

(b) Employees who are directed to work temporarily in or about a permanent maintenance depot and who immediately prior to being so directed were in receipt of the allowance for a period of not less than three months shall be paid two-thirds of the allowance prescribed herein.

LEADING HANDS

1. Any employee referred to in Clause 9 of the Building Trades (Government) Award No 31A of 1966 or a leading hand defined in paragraph (h) of Sub-clause (3) of Clause 6—Definitions, who is placed in charge for not less than one day of—
   (a) not less than three and not more than ten other employees shall be paid at the rate of **$54.40** Per Fortnight extra;
   (b) more than ten and not more than twenty other employees shall be paid at the rate of **$72.52** Per Fortnight extra;
   (c) more than twenty other employees shall be paid at the rate of **$90.37** Per Fortnight extra.
2. Any leading hand defined in paragraph (h) of Subclause (3) of Clause 6—Definitions Building Trades (Government) Award No 31A of 1966 being a licensed scaffolder who, in compliance with the provisions of the Construction Safety Act 1972, and the regulations made thereunder, is employed or engaged in the supervision of the erection or demolition of scaffolding or gear on any scaffold exceeding or likely to exceed 6.1 metres in height from the horizontal base, shall be paid the rate prescribed in paragraph (a) of Sub-clause 37.1 hereof when placed in charge of less than three other employees.
3. The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employee concerned for all purposes of this award.

SCHEDULE E: TEA ATTENDANTS

PAY

The following shall be the minimum rates payable to employees covered by this award:

Annual Pay —$	F/nightly Pay—$
16909.82	648.30

In addition to the above pay service pay will be paid for each year of service at the following rates:

	Annual Pay— $	F/nightly Pay—$
Year 1	2826.91	108.38
Year 2	3092.44	118.56
Year 3 and thereafter	3315.71	127.12

SCHEDULE F: CIVIL SERVICE ASSOCIATION

(Non Specified Calling)

LEVEL 1	Annual Pay—$	F/nightly Pay—$
Under 17 years	11392	436.76
17 years	13311	510.37
18 years	15527	595.29
19 years	17972	689.00
20 years	20182	773.73
21 years or 1st yr	22173	850.06
22 years or 1st yr	22883	877.26
23 years or 1st yr	23594	904.52
24 years or 1st yr	24298	931.52
25 years or 1st yr	25009	958.78
26 years or 1st yr	25720	986.04
27 years or 1st yr	26533	1017.23
28 years or 1st yr	27101	1038.98
29 years or 1st yr	27937	1071.04

LEVEL 2		Annual Pay—$	F/nightly Pay—$
	1st Yr	28935	1109.30
	2nd Yr	29703	1138.79
	3rd Yr	30507	1169.59
	4th Yr	31358	1202.23
	5th Yr	32251	1236.48
LEVEL 3	1st Yr	33475	1283.40
	2nd Yr	34428	1319.91
	3rd Yr	35413	1357.69
	4th Yr	36423	1396.40
LEVEL 4	1st Yr	37808	1449.56
	2nd Yr	38892	1491.07
	3rd Yr	40009	1533.92
LEVEL 5	1st Yr	42161	1616.44
	2nd Yr	43613	1672.06
	3rd Yr	45123	1729.93
	4th Yr	46691	1790.02
LEVEL 6	1st Yr	49210	1886.69
	2nd Yr	50925	1952.43
	3rd Yr	52698	2020.42
	4th Yr	54590	2092.90
LEVEL 7	1st Yr	57495	2204.30
	2nd Yr	59503	2281.24
	3rd Yr	61690	2365.11
LEVEL 8	1st Yr	65241	2501.27
	2nd Yr	67784	2598.71
	3rd Yr	70939	2719.74
LEVEL 9	1st Yr	74881	2870.83
	2nd Yr	77541	2972.79
	3rd Yr	80578	3089.26
CLASS 1		85168	3265.20
CLASS 2		89761	3441.33
CLASS 3		94349	3617.19
CLASS 4		98939	3793.22

CIVIL SERVICE ASSOCIATION (Specified Calling)

LEVEL		Annual Pay—$	F/nightly Pay—$
Level 2/4	1st Yr	28935	1109.30
	2nd Yr	30507	1169.59
	3rd Yr	32251	1236.48
	4th Yr	34428	1319.91
	5th Yr	37808	1449.56
	6th Yr	40009	1533.92
Level 5	1st Yr	42161	1616.44
	2nd Yr	43613	1672.06
	3rd Yr	45123	1729.93
	4th Yr	46691	1790.02
Level 6	1st Yr	49210	1886.69
	2nd Yr	50925	1952.43
	3rd Yr	52698	2020.42
	4th Yr	54590	2092.90
Level 7	1st Yr	57495	2204.30
	2nd Yr	59503	2281.24
	3rd Yr	61690	2365.11
Level 8	1st Yr	65241	2501.27
	2nd Yr	67784	2598.71
	3rd Yr	70939	2719.74
Level 9	1st Yr	74881	2870.83
	2nd Yr	77541	2972.79
	3rd Yr	80578	3089.26
Class 1		85168	3265.20
Class 2		89761	3441.33
Class 3		94349	3617.19
Class 4		98939	3793.22

FULL TIME CADETS

While employed in MRWA during vacations and on annual leave:

	Annual Pay—$	Fortnightly Pay—$
1st year	15527	595.28
2nd year	17972	689.02
3rd year	20182	773.76
4th year	22173	850.08
5th year	22883	877.28

Pay rates adjust with increases approved for Level 1 Employees from Schedule E of this Schedule.

Sustenance Allowances

Category I		$ / fortnight
A Cadet attending the University of W.A. or the Curtin University of Technology who is not eligible to receive a living away from home allowance.	1st Yr	259.56
	2nd Yr	298.78
	3rd Yr	335.86
	4th Yr	368.56
	5th Yr	381.70
Category II		
A cadet attending the university of W.A. or the Curtin University of Technology whose ordinary place of residence is outside a radius of 40km from the Perth G.P.O who is obliged to live away from his/her ordinary residence. The rates are payable only with approval of the employer.	1st Yr	344.62
	2nd Yr	399.12
	3rd Yr	449.24
	4th Yr	492.84
	5th Yr	508.22
Category III		$ PA
A cadet attending a University in another State. Rates are payable in three instalments at the beginning of each academic year.	1st Yr	7453
	2nd Yr	8627
	3rd Yr	9687
	4th Yr	10643
	5th Yr	10984

Special Supplementary Allowance

Full time cadets in Categories II or III who are in residence at a University College, are entitled to a special supplementary allowance to cover the cost of college accommodation in excess of **$354.96** per fortnight. Where the cost of accommodation in a University College exceeds this amount, a refund of the difference is payable. In the event that an eligible Cadet is living in accommodation other than a University College, at a cost of in excess of **$354.96** per fortnight, that person is entitled to a refund of the difference between this amount and the actual costs. However, the refund is not to exceed the amount which would have been payable were the Cadet in residence at a College of the University which he/she is required to attend.

SCHEDULE G: ENGINEERING TRADES—FORTNIGHTLY RATES

		Annual Pay—$	Fortnightly Pay—$
C6-LEVEL I	1st yr	31008	1188.80
	2nd Yr	31008	1188.80
	3rd Yr	31008	1188.80
C7-LEVEL II	1st yr	28525	1093.60
	2nd Yr	28817	1104.80
	3rd Yr	29109	1116.00
C8-LEVEL I	1st yr	27283	1046.00
	2nd Yr	27581	1057.40
	3rd Yr	27867	1068.40
C9-LEVEL II	1st yr	26044	998.50
	2nd Yr	26342	1009.90
	3rd Yr	26628	1020.90
C10-LEVEL I	1st yr	24800	950.80
	2nd Yr	25097	962.20
	3rd Yr	25387	973.30
C11-LEVEL IV	1st yr	22920	872.00
	2nd Yr	23216	883.23
	3rd Yr	23507	894.25
C12-LEVEL III	1st yr	21680	831.20
	2nd Yr	21980	842.70
	3rd Yr	22267	853.70
C13-LEVEL II	1st yr	20337	779.70
	2nd Yr	20635	791.10
	3rd Yr	20921	802.10

Leading Hands

(a) A tradeperson placed in charge of three or more other employees shall, in addition to the ordinary rate, be paid per fortnight—

(i) **$36.30** if placed in charge of not less than three and not more than ten other employees.

(ii) **$55.40** if placed in charge of more than ten and not more than twenty other employees.

(iii) **$71.30** if placed in charge of more than twenty other employees.

(b) A certificated Rigger or Scaffolder on ships and buildings, other than a Leading Hand, who, in compliance with the provisions of the Occupational Health, Safety and Welfare Act and Regulations 1988, is responsible for the supervision of not less than three other employees, shall be deemed to be a Leading Hand and be paid at the rate prescribed for Leading Hand in charge of not less than three and not more than ten other employees.

Construction Allowance

(a) In addition to the appropriate rate of pay prescribed in Schedule G hereof, an employee shall be paid-

(i) **$60.00** per fortnight if engaged on the construction of a large industrial undertaking or any large civil engineering project.

(ii) **$53.90** per fortnight if engaged on a multi-story building but only until the exterior walls have been erected, the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A "multi-story building" is a building which, when completed, will consist of at least five stories.

(iii) **$34.00** per fortnight if engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Classification Structure and Definitions of the Engineering Trades (Government Award) 1967.

(b) Any dispute as to which of the aforesaid allowance applies to then particular work shall be determined by the Board of Reference.

(c) Any allowance paid under this Sub-clause includes any allowance otherwise prescribed in Clause 17.—Special Rates and Provisions of the Engineering Trades (Government Award) 1967.

Tool Allowance

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

(i) **$20.20** per fortnight to such tradesperson; or

(ii) in the case of an apprentice a percentage which appears against the relevant year of apprenticeship in Schedule A of this document, for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesperson or as an apprentice.

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

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

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

SCHEDULE H: DISTRICT ALLOWANCE

Effective from July 1 1994

(a) Employees Without Dependants Sub-clause 31.3—

Column I District No.	Column II Standard Rate $pa.	Column III Exceptions to Standard Rate (Town or Place)	Column IV Rate $
6	2894	nil	nil
5	2368	Fitzroy Crossing	3188
		Halls Creek	
		Turner River Camp	
		Nullagine	
		Liveringa (Camballin)	2962
		Marble Bar	
		Wittenoom	
		Karratha	2789
		Port Hedland	2594
4	1106	Warburton Mission	3206
		Carnarvon	1123
3	698	Meekatharra	1193
		Mount Magnet	
		Wiluna	
		Laverton	
		Leonora	
		Cue	
2	500	Kalgoorlie	180
		Boulder	
		Ravensthorpe	712
		Norseman	
		Salmon Gums	
		Marvel Loch	
		Esperance	
1	Nil	Nil	Nil

(b) Employees with Dependants (Sub-clause 31.4). Double the appropriate rates prescribed in (a) above for Employees without dependants.

SCHEDULE I: OTHER ALLOWANCES

1. Diving: **$4.15** per hour or part thereof (Clause 32).
2. Flying: (Clause 33)
   (a) Observation and photographic duties—per hour or part thereof **$7.20** .
   (b) Observation and photographic duties at height less than 304 metres or in unpressurised aircraft at heights more than 3048 metres—**$9.90** .

SCHEDULE J: MOTOR VEHICLE ALLOWANCE

Part I—Motor Car

(NOTE: Sub-clause 34.2(a) Employee Required to Supply Vehicle)

Area and Details	Engine Displacement (in cubic centimetres) Rate (cents) per Kilometre		
	over 2600cc	over 1600cc to 2600cc	1600cc and under
Metropolitan Area			
First 4000 km	103.5	90.8	77.4
Over 4000—8000 km	44.5	39.2	34.3
Over 8000—16000 km	24.8	22.0	19.9
Over 16000 km	26.9	23.7	21.1
South West Land Division			
First 4000 km	105.9	93.3	79.8
Over 4000—8000 km	45.5	40.2	35.2
Over 8000—16000 km	25.3	22.5	20.3
Over 16000 km	27.1	23.9	21.3
North of 23.5° South Latitude			
First 4000 km	119.1	105.4	90.4
Over 4000—8000km	50.5	44.9	39.2
Over 8000—16000 km	27.7	24.7	22.2
Over 16000 km	28.1	24.9	22.1
Rest of the State			
First 4000 km	109.4	96.2	82.1
Over 4000 km—8000 km	47.0	41.4	36.3
Over 8000 km—16000 km	26.2	23.2	21.0
Over 16000 km	27.2	24.3	21.7

Part II—Motor Car

NOTE: Sub-clause 34.4(a) Employee NOT required to supply vehicle.

Area and Details	Engine Displacement (in cubic centimetres) Rate (cents) per Kilometre		
	over 2600cc	over 1600cc to 2600cc	1600cc and under
Metro. Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5 ° South Lat.	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

Part III—Motor Cycle

Distance Travelled During a year on Official Business Rate c/km	17.1

MASTER BUILDERS ASSOCIATION—CONQUEST HOMES INDUSTRIAL AGREEMENT
No. AG 239 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Desoto Holdings Pty Ltd trading as Conquest Constructions.

No. AG 239 of 1996.

COMMISSIONER P E SCOTT.

11 April 1997.

Order.

WHEREAS this is an application to register an industrial agreement pursuant to section 41 of the Industrial Relations Act, 1979; and

WHEREAS a hearing was convened on the 20th day of September 1996, at which there was no appearance on behalf of the Respondent; and

WHEREAS that hearing was adjourned on the basis that upon the Applicant provide to the Commission the Respondent's written consent to amendments sought at the hearing, the industrial agreement would be registered; and

WHEREAS the Commission wrote to the Applicant requesting this information on the 22nd day of November 1996, the 10th day of February and the 19th day of March 1997; and

WHEREAS on the 19th day of March 1997 the Applicant wrote to the Commission requesting registration of the agreement; and

WHEREAS on the 20th day of March 1997 the Commission advised both parties by way of letter that if written confirmation of the amendments sought by the Applicant was not received from the Respondent by the 4th day of April 1997, the matter would be dismissed; and

WHEREAS that confirmation has not been received;

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.

MOERLINA SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 1997.
No. AG 63 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

The Moerlina School (Inc.)

No. AG 63 of 1997.

Moerlina School (Enterprise Bargaining) Agreement 1997.

15 April 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 Moerlina School (Enterprise Bargaining) Agreement 1997 filed in the Commission on the 4th day of March 1997 be registered effective from the 2nd day 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement will be known as the Moerlina School (Enterprise Bargaining) Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Definitions
4. Parties to the Agreement
5. Scope of Agreement
6. Date and Duration of Agreement
7. Expiration of Agreement
8. Relationship to Parent Award
9. Single Bargaining Unit
10. Objectives
11. Salary Rates
12. Agreed Efficiency Improvements
13. Agreed Matters
14. Expectations of Staff
15. No Reduction
16. No Further Claims
17. No Precedent
18. Dispute Resolution Procedure
19. Signatories

3.—DEFINITIONS

(1) The "Moerlina School Council" shall mean the elected representatives of the School Parent Body as defined in the Constitution Moerlina School Council, Claremont WA. 2nd Revision August 1994 and its subsequent amendments.

(2) The "award" shall mean the Independent Schools' Teachers' Award, 1976 and its subsequent amendments unless otherwise stated.

4.—PARTIES TO THE AGREEMENT

This agreement is made between Moerlina School Council (the school) whose commitment is signified by the signature of the Chairperson of the Council at the time, and the Independent Schools Salaried Offices' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

5.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed within the scope of the award excepting the Principal.

(2) The number of employees covered by this agreement is 4.

6.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on 31 January 1997 and shall expire on 31 January 1998. The parties have agreed to meet no later than 6 months prior to the expiration of this agreement to review this agreement.

7.—EXPIRATION OF AGREEMENT

On expiration of the agreement and in the absence of the registration of a subsequent Enterprise Agreement the provisions of this agreement shall apply until such time as a new agreement is registered.

8.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award. Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

9.—SINGLE BARGAINING UNIT

The bodies party to this agreement have formed a single bargaining unit. The single bargaining unit has conducted negotiations with the school and reached full agreement with the school represented by this agreement.

10.—OBJECTIVES

The nature and purposes of this agreement are to—

(1) Consolidate and develop further, initiatives arising out of the award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will ensure that the school and its staff become genuine participants and contributors to the school's aims, objectives and philosophy, ensuring the school's name and educational reputation in the community is not tarnished or discredited in any way.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The school and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the school and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

11.—SALARY RATES

(1) Salaries

The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the award shall be—

(a) For teachers employed at the school for less than one year—

Step	Salary $ Current Award Rate	Salary $ 1 February 1997
Step 1	22,769	24,897
Step 2	24,102	26,355
Step 3	25,434	27,811
Step 4	26,972	29,493
Step 5	28,407	31,062
Step 6	29,637	32,407
Step 7	30,867	33,752
Step 8	32,404	35,433
Step 9	34,095	37,282
Step 10	35,479	38,795
Step 11	36,709	40,140
Step 12	38,247	41,822
Step 13	39,784	43,502

(b) For teachers employed at the school for a duration of one year or more—

Step	Salary $ Current Award Rate	Salary $ 1 February 1997
Step 1	22,769	24,897
Step 1	22,769	25,352
Step 2	24,102	26,837
Step 3	25,434	28,320
Step 4	26,972	30,032
Step 5	28,407	31,630
Step 6	29,637	33,000
Step 7	30,867	34,369
Step 8	32,404	36,081
Step 9	34,095	37,963
Step 10	35,479	39,504
Step 11	36,709	40,874
Step 12	38,247	42,587
Step 13	39,784	44,298

(2) Superannuation

The Council will contribute the equivalent of 6% of the teacher's base salary to its Superannuation scheme on behalf of the teacher. The teacher may, if he/she wishes, also contribute to this scheme. Provision is also made that upon written request, the teacher may nominate an alternative, recognised superannuation scheme to which the school will contribute the 6% rather than the school prescribed scheme. For information on the school's Superannuation scheme, staff are advised to contact the School Administrator.

(3) Annual Leave Loading

The provisions of Clause 9 (6) of the award shall not apply; the entitlement has been subsumed into the salary rates prescribed in subclause (1) of this Clause.

12.—AGREED EFFICIENCY IMPROVEMENTS

(1) Job Description

The Job Description and Selection Criteria for any new or vacated teaching position will be available to the teacher prior to application and will be the basis of Performance Management and target setting of the teacher. For staff already employed their particular job requirements and target setting will be mutually agreed.

(2) Other Duties

The teaching staff are expected to perform other duties as stated on the Job Description or as mutually agreed by the Principal and the staff member for the benefit of the school as outlined in Clause 14.

(3) Performance Management

The parties agree to work together to develop Performance Management Procedures.

(4) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers, employed for five days or less, may be engaged by the day or half-day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(5) First Teaching Appointment

A teacher appointed to his/her first teaching position, who, at the end of the initial twelve (12) months is deemed by the school not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to subclause (2) of Item 2—Induction of Appendix 1 of the award.

(6) Sick Leave

The employer shall be entitled to a medical certificate if the absence on sick leave is for two days or more, and in any case if a teacher's sick leave absences have exceeded five days in any one year.

13.—AGREED MATTERS

(1) Carer's Leave

(a) A teacher may take in one year of service up to five (5) days of paid leave from his/her sick leave to care for a family member in need of care provided that the teacher—

(i) informs the Principal (or a person designated by the Principal) of the need for Carer's Leave and the estimated period of absence at the first opportunity, and

(ii) except for the first day's absence in the sequence of consecutive days and if requested by the school, provides a medical certificate setting out particulars of the illness or injury or other adequate evidence of the need for leave.

(b) Such leave shall not accrue from year to year.

(c) A maximum of five (5) days of such leave shall be debited to the teacher's sick leave.

(d) Such leave shall not prejudice a teacher's right to special leave in accordance with the provisions of the award.

(e) In this clause the word family shall include: parents, grandparents, siblings, parents in law, step parents, spouse, defacto spouse, children, step children, grandchildren and, at the discretion of the Principal, other persons for whom the teacher has responsibility.

(2) Long Service Leave

(a) Notwithstanding the provisions of subclause (1) of Clause 10—Long Service Leave, of the award, from 1 January 1997, a teacher shall accrue long service leave at the rate of 1.43 weeks' of leave per year of service within the school.

(b) A teacher shall be entitled to long service leave on the accrual of ten (10) weeks' leave.

(c) The teacher must take long service leave within two (2) years of the date of entitlement.

(d) Any teacher found to be guilty of serious misconduct as described by the school and dismissed by the school for this misconduct will be ineligible for any Long Service Leave benefits or portion thereof except where the teacher has already reached the seven (7) years' service and not taken the due leave.

(e) Where a teacher has completed at least five (5) years' service but less than seven (7) years' service and employment is terminated—

(i) by their death; or

(ii) in any circumstance other than serious misconduct as described in Subclause 2(d) of this clause the amount of leave shall be such portion of ten (10) weeks leave as the number of completed years of such service bears to seven (7) years.

(f) For any service prior to 1 January 1997, the accrued entitlement for Long Service Leave shall be that which is prescribed under the terms of the teacher's prior agreement, or in the absence of this being stipulated, as per the terms stated in the school's agreement with staff dated 30 June 1989.

14.—EXPECTATIONS OF STAFF

Moerlina School is a small, community-based school which functions as a cooperative team with the participation of parents, Council, the Principal and staff in the decision making process. Thus, in addition to normal teaching duties, the school expects the following from the staff—

(1) Staff are expected to positively participate in the School's Development Plan (SDP) process with regard to curriculum and resource matters.

(2) Staff are expected to attend information evenings and other forums regarding matters relevant to the SDP.

(3) In line with subclause (2) above, staff are expected to attend eight (8) School Development non teaching days per year nominally the day before students commence school and the day after students finish school in each of the four school teaching terms. It is not the intention of the school that such days be held during school holidays.

The agenda for these days may include individual or whole staff professional development activities and/or school development sessions as determined by the Principal in consultation with the staff.

(4) Staff are expected to keep abreast with current trends and methods in teaching and curriculum matters ensuring they conform with the school's stated philosophy and vision.

(5) The school actively encourages staff in their personal professional development and will consider applications of up to 2 days' leave per annum from staff wishing to pursue such development. Approval of such applications is at the discretion of the Principal.

(6) Staff are expected to organise and conduct individual parent/teacher interviews out of school hours twice per year.

(7) Teachers are expected to assist in the planning, organising and staffing of the annual whole school camp, and to initiate, organise and attend class camps, excursions and/or sleepovers as appropriate to the class curriculum and in accordance with the school's philosophy.

15.—NO REDUCTION

Nothing contained herein shall entitle the school to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

16.—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.

17.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the school or not.

18.—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 to the agreement together with a representative if requested by either party.

(3) If the matter if not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

19.—SIGNATORIES

T.I. Howe

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

J.H. Haworth

Chairperson, Moerlina School Council

MULTIPLEX/KARRINYUP S.C. SITE INDUSTRIAL AGREEMENT
No. AG 316 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ost Pty Ltd trading as Sunlite Australia.

No. AG 316 of 1996.

COMMISSIONER P E SCOTT.

11 April 1997.

Order.

WHEREAS this is an application to register an industrial agreement pursuant to section 41 of the Industrial Relations Act, 1979; and

WHEREAS a hearing was convened on the 12th day of December 1996, at which there was no appearance on behalf of the Respondent; and

WHEREAS that hearing was adjourned on the basis that upon the Applicant provide to the Commission the Respondent's written consent to amendments sought at the hearing, the industrial agreement would be registered; and

WHEREAS the Commission wrote to the Applicant requesting this information on the 3rd day of January, the 10th day of February and the 19th day of March 1997; and

WHEREAS on the 19th day of March 1997 the Applicant wrote to the Commission requesting registration of the agreement; and

WHEREAS on the 20th day of March 1997 the Commission advised both parties by way of letter that if written confirmation of the amendments sought by the Applicant was not received from the Respondent by the 4th day of April 1997, the matter would be dismissed; and

WHEREAS that confirmation has not been received;

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.

O'DONNELL GRIFFIN (MAINTENANCE OPERATIONS) PORT HEDLAND ENTERPRISE BARGAINING AGREEMENT 1997
No. AG 87 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

O'Donnell Griffin
(Maintenance Operations)

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. AG 87 of 1997.

O'Donnell Griffin (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997

SENIOR COMMISSIONER G.L. FIELDING.

17 April 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 1st day of April, 1997 entitled O'Donnell Griffin (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 O'Donnell Griffin (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997.

1A.—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 Committment
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 & 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) O'Donnell Griffin (Maintenance Operations)

(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 O'Donnell Griffin (Maintenance Operations) 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 8 employees engaged by O'Donnell Griffin 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 O'Donnell Griffin/Wormald Fire Systems Western Australia Enterprise Bargaining Agreement 1996.

Where there is any inconsistency between this Agreement and either of the documents named above, the terms and provisions of this Agreement shall prevail to the extent of 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, all parties to this Agreement shall commit to the immediate implementation of the Drug and Alcohol Policy which is currently being developed by agreement between 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 O'Donnell Griffin (Maintenance Operations).

Peter Godley (signed)	Peter Godley	27/3/97
Signature	Name of person authorised to sign (print)	Date
indecipherable (signed)	Project Manager	27/3/97
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	24-3-97
Signature	Title (print)	Date
indecipherable (signed)	Clerk	24-3-97
Witness Signature	Title (print)	Date

PARAPLEGIC-QUADRIPLEGIC ASSOCIATION OF WA (INC) EMPLOYEES WAGE AGREEMENT. No. AG 12 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Disabled Workers' Union of Western Australia

and

Paraplegic-Quadriplegic Association of WA Inc.

No. AG 12 of 1997.

COMMISSIONER C.B. PARKS.

8 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT.
No. AG 12 OF 1997.

HAVING heard Mr G. Hocking (of Counsel) on behalf of the first named party and Mr P.G. Robertson on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement titled the Paraplegic-Quadriplegic Association of WA (Inc) Employees Wage Agreement, filed in the Commission on 20 January 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This agreement shall be known as the Paraplegic-Quadriplegic Association of WA (Inc) Employees Wage Agreement.

2.—SCOPE

This agreement applies to persons with disabilities who are eligible for receipt of the Disability Support Pension and membership to The Disabled Workers Union of Western Australia ("the Union"), and who are employed by the Paraplegic-Quadriplegic Association of WA (Inc) ("the employee") at any of the employees premises.

3.—TERM

This agreement shall be for a term of 5 years from the date hereof.

4.—WAGES

(1) An employee covered by this Agreement who works full time shall be paid in accordance with the minimum rates set out in Clause 5.

(2) The hourly rate for employees who work part time shall be calculated by dividing the appropriate weekly rate by 38.

(3) The rate of wage paid to an employee shall be in accordance with the appropriate Wage Level set out in Clause 5 as determined through Performance Appraisals administered by the employer.

(4) In consideration of the Wage Level to be applied the employer shall conduct a Performance Appraisal on every applicanvemployee. The following Appraisal Schedule shall, as far as practicable, be followed—

(a) A Work Trial Appraisal shall be conducted at 4 weeks from commencement, in the first instance. Where extension of the Work Trial is agreed between the employer and the applicant, a further appraisal shall be conducted as then agreed but no later than 12 weeks following commencement of the Work Trial; and

(b) Upon successful completion of the Work Trial Performance Appraisal the applicant will be accepted as an employee under the Award and this Agreement as a Level 1 Employee.

(c) A six-monthly Appraisal shall be conducted no later than six months from commencement of the Work Trial; and

(d) Thereafter an Appraisal shall be conducted at least once each year within 4 weeks of the anniversary of the commencement of the Work Trial.

(5) Nothing in this Agreement shall prevent the employer from offering increments between or above Wage Levels or to facilitate movement between or above Wage Levels in reward of performance where such recognition is appropriate or where not all criteria have been met.

(6) Notwithstanding this Agreement, where an employee's performance no longer meets the relevant performance criteria, whether as a result of significant deterioration in relation to the employee's disability or other cause(s), the employer shall be entitled to adjust the Wage Level in accordance with performance criteria following advice and discussion with the employee and the Union.

(7) In the event that an employee is dissatisfied with their wage determination, the employee may seek a review of the Wage level.

(a) Such a Wage Level review shall occur through the timely application of the employers grievance procedures.

(b) In the event that the employee remains dissatisfied with their wage determination following the completion of the grievance procedure the Union, at the request of the employee, may advocate on the employee's behalf to effect a resolution. In this respect, the union shall be entitled to access the employee's performance appraisal documentation.

(c) If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute

(8) The parties to this Agreement acknowledge that the employer is a service provider seeking to meet the individual needs of employees subject to this Award through a Service Employment Model and that such a model of service provision is contrary to a Commercial Model of Employment. In consequence, it is recognised that "wages" paid will reflect the societal goals, inefficiencies and earnings of the service model rather than those of a "commercial model". Further, it is not the purpose of this Agreement to promote one position or employee at the expense of others.

5.—MINIMUM RATES OF WAGE

(1) The minimum rates of full time wages payable to employees covered by this Agreement shall be—

Pre-Employment	**Supplement**
Work Trial	$38.00/week ($1.00/hour)
Level	**Wage Rate**
Employee—Wage Level I	$57.00/week ($1.50/hour)
Employee—Wage Level II	$60.80/week ($1.60/hour)
Employee—Wage Level III	$72.20/week ($1.90/hour)

(a) These rates will be reviewed annually by the employer unless otherwise agreed by the parties.

(b) For the purpose of review, the Consumer Price Index (CPI) for Perth and Western Australia will be taken as a guide together with any other factors agreed by the parties.

(c) Such review is to be completed by 31 March each year for implementation on the first day of the first pay period commencing after 1 July of the same year.

(2) Where an employee, upon registration of this Agreement, is in receipt of an existing wage in excess of the relevant assessed Wage Level, such existing age shall be maintained until such time as the relevant Wage Level reaches the actual rate paid, or the next higher Wage Level is achieved through appraisal. Nothing in this Clause however shall preclude the application of Clause 4, subclause 6 in proper circumstances.

6.—DEFINITIONS

In this agreement, the following definitions shall apply—

Service Employment Model—means a model of employment which is based on the employment goals and training needs of employees. Work is created for individuals and the commercial considerations of such work are secondary to the needs and employment of those persons subject to this Agreement. As this model is not based primarily on commercial considerations and decision making, earnings are restricted accordingly.

Commercial Model of Employment—means employment in commercial enterprises where the primary focus is on meeting the needs of the enterprise and the availability of jobs and the provision of training and support is in keeping with employer requirements relative to the profitability of the enterprise. The labour force, and training of the labour force, is a factor of production not the primary objective of the enterprise.

8.—NUMBER OF EMPLOYEES BOUND

The parties estimate that 180 employees will be bound by this agreement.

Signed in PERTH of this day of 1997.

The Common Seal of

PARAPLEGIC-QUADRIPLEGIC ASSOCIATION OF WESTERN AUSTRALIA (INC.)

was affixed with the authority of the Board of Directors in the presence of

(signed by G Addison)
Trustee

common seal affixed

(signed by J Fisher)
Trustee

(signed by N Glass)
Executive Director

Signed on behalf of

THE DISABLED WORKERS UNION OF WESTERN AUSTRALIA

(signed by G Cassidy)
Secretary

(signed by R A Hughes)
President

PIONEER CONCRETE HERNE HILL QUARRY OPERATION 1996 REDUNDANCY AGREEMENT 1996 No. AG 1 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pioneer Concrete (WA) Pty Ltd

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers And Others.

No. AG 1 of 1997.

Pioneer Concrete Herne Hill Quarry Operation 1996 Redundancy Agreement 1996.

COMMISSIONER P E SCOTT.

24 March 1997.

Correcting Order.

WHEREAS an error occurred in the issuance of the above Order dated 18 March 1997 (unreported), the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. Clause 6.—Definitions: Delete subclause 6.1 (b) and insert the following in lieu thereof:

b) due to other circumstances in which the Company decides to dispense with an employee's services other than in the normal course of business or as provided for elsewhere within this clause.

but

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

PORT HEDLAND CONCRETE PLANT (ENTERPRISE BARGAINING) AGREEMENT No. AG 59 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Limited trading as CSR Construction Materials

and

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch and Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

No. AG 59 of 1997.

Port Hedland Concrete Plant (Enterprise Bargaining) Agreement.

COMMISSIONER P E SCOTT.

22 April 1997.

Order.

WHEREAS this is an application pursuant to section 41 of the Industrial Relations Act, 1979; and

WHEREAS a hearing for registration of the agreement was convened on the 11th day of March 1997; and

WHEREAS at that hearing the parties requested proceedings be adjourned; and

WHEREAS the Applicant contacted the Commission by telephone on the 16th day of April 1997 and requested the matter be dismissed; and

WHEREAS the Respondents consent to such dismissal;

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.

PRESBYTERIAN LADIES' COLLEGE (ENTERPRISE BARGAINING) AGREEMENT 1997. No. AG 64 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Presbyterian Ladies' College.

No. AG 64 of 1997.

Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1997.

COMMISSIONER A.R. BEECH.

15 April 1997.

Order.

HAVING heard Ms T. Howe on behalf of the Applicants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1997 filed in the Commission on the 4th day of March 1997 be registered effective from the 2nd day of April 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1997 and shall replace the Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Efficiency Improvements
11. Long Service Leave
12. Dispute Resolution Procedures
13. Other Matters
14. No Reduction
15. No Further Claims
16. No Precedent
17. Signatories
Appendix I

3.—PARTIES TO THE AGREEMENT

This agreement is made between Presbyterian Ladies' 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.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976 (the Award) by the College.

(2) The number of employees covered by this agreement is 92.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on 2nd April, 1997 and shall expire on 31st December, 1997. The parties have agreed to meet no later than six months prior to the expiration of this agreement to review this agreement.

6.—RELATIONSHIP TO AWARD

This agreement shall be read and interpreted in conjunction with the award.

Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The bodies party 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 develop further, initiatives arising out of the award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will ensure that the College and its staff become genuine participants and contributors to the College's aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The College and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the College and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

9.—SALARY RATES

(1) Salaries

(a) The salary rates prescribed in the award were increased by 2.5% in October 1993, 2.5% in January 1994, 2.5% in January 1995, 5% in January, 1996, and 2.5% in July, 1996.

(b) In addition to the rates prescribed in paragraph (a) of this clause the salary rates shall be further increased by 3% from 1st January 1997 and 3% from 1st July 1997 as per Appendix 1. If there is an increase of ten school students over the budgeted figure of 970 before the commencement of second semester, the College will lift the percentage increase for the second half of the year to 4%.

(2) Indexation of promotional positions:

(a) Allowance for Promotional position of Head of Department is paid at 12.5% of the maximum salary level.

(b) Allowance for Co-ordinator is paid at 6.5% of the maximum salary level.

(3) In the event of any safety net adjustment or increase being applied to the award, such adjustment or increase shall be absorbed into the increase specified in sub-clause (b) of this clause.

10.— EFFICIENCY IMPROVEMENTS

(1) Professional Development

Professional Development activities shall be undertaken partly in College time and partly in the teachers' own time; where feasible in equal proportions.

There will continue to be consultation with teachers in the planning of appropriate professional development.

The College will continue to give priority to requests from teachers who are keen to build their resources and expertise in the use of laptop computers.

The College will give appropriate in-service in laptop computers to staff members new to the College.

(2) Part Time Teaching Continuity of Service

(a) The part time teacher will have the expectation of continuity of service. The teaching load each year shall be reviewed according to the needs of the College. Notice of any variation shall be in writing at least six weeks prior to the end of the teaching term. The teacher shall consent in writing, to such variation.

(b) The periods taught will be considered as a fraction of the normal teaching load of a full time staff member for the purposes of calculating salary. A nominal period allocation of 27 periods per cycle will be used.

(c) As members of the staff team, part time teachers will contribute pro-rata to the extra curricular and pastoral work of the teaching team.

(3) First Teaching Appointment

The College will give a statement of requirements, including methods of appraisal, for teachers during their first year of service. A teacher who, at the end of the initial twelve months is deemed by the school not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to paragraph (2) of Item 2.—Induction of Appendix 1 of the award.

(4) Promotional Positions

The parties acknowledge that the structure of the promotional position framework contained in the award may not fully meet the College's needs. It is agreed that to the extent that the award is inadequate, the College may implement a promotional position not consistent with the award and this will be advertised within the College.

(5) Payment of Relief Teachers

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 and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(6) Early Retirement

Early retirement is available to all staff at the age of 55 in line with the availability of the superannuation package.

(7) Pastoral Care

The parties are committed to enhance pastoral care of both students and teachers.

(a) Pro-active pastoral care of students is seen as the responsibility of every teacher. To meet this responsibility, teachers will be assisted by an appropriate programme of professional development and appraisal.

(b) The College will support teachers in balancing professional and personal responsibilities, recognising that the circumstances of individual teachers will change from time to time and throughout their career.

(8) Deferred Salary Option

On commencement of the agreement, teaching staff may elect to defer 20% of their annual salary for four years, and receive leave for the whole of the fifth year on 80% of their annual salary on commencement of the agreement. A qualifying period of three years would apply.

11.—LONG SERVICE LEAVE

Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, a teacher who has completed seven (7) years' continuous service with the College shall be entitled to take the entitlement, accrued at the rate of 1.3 weeks per year when the amount of leave accrued corresponds to the length of a school term.

12.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as any question, dispute or difficulty arising out of this agreement.

(2) The following procedure shall apply to the resolution of any dispute—

(a) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.

(b) If the parties are unable to resolve the dispute, the matter, at the request of either party shall be referred to a meeting between the parties to the agreement together with any additional representative as may be agreed by the parties.

(c) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

13.—OTHER MATTERS

When reviewing this agreement, or at an earlier mutually agreeable time, the parties agree to discuss such matters that are of relevance to either the College or the staff. The College has agreed to treat as a priority the matter of staff salaries being comparable with those of other independent schools in 1998.

14.—NO REDUCTIONS

Nothing contained herein shall entitle the College to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

15.—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.

16.—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.

17.—SIGNATORIES

Hazel Day
on behalf of
Presbyterian Ladies' College

T.I. Howe
on behalf of
Independent Schools' Salaried Officers
Association of Western Australia,
Industrial Union of Workers

APPENDIX I

Salaries

Step	Salary $ per annum 1 January 1997	Salary $ per annum 1 July 1997
1	26,841	27,646
2	28,470	29,324
3	29,367	30,248
4	31,203	32,139
5	32,916	33,903
6	34,384	35,416
7	35,852	36,928
8	37,687	38,817
9	39,705	40,896
10	41,358	42,598
11	42,826	44,111
12	44,664	46,004
13	46,497	47,892

ROYAL WA INSTITUTE FOR THE BLIND EMPLOYEES WAGE AGREEMENT No. AG 13 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Disabled Workers' Union of Western Australia

and

Royal Institute for the Blind Inc.

No. AG 13 of 1997.

COMMISSIONER C.B. PARKS.

8 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 13 OF 1997

HAVING heard Mr G. Hocking (of Counsel) on behalf of the first named party and Mr P.G. Robertson on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement titled the Royal WA Institute for the Blind Employees Wage Agreement, filed in the Commission on 20 January 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This agreement shall be known as The Royal WA Institute for the Blind Employees Wage Agreement.

2.—SCOPE

This agreement applies to persons with disabilities who are eligible for receipt of the Disability Support Pension and membership to The Disabled Workers Union of Western Australia ("the Union"), and who are employed by The Royal WA Institute for the Blind (Inc.)("the employee') at any of the employees premises.

3.—TERM

This agreement shall be for a term of 3 years from the date hereof.

4.—WAGES

(1) An employee covered by this Agreement who works full time shall be paid in accordance with this Agreement.

(2) **Part-time Employees**

Part-time employees shall be paid wages for the number of hours they work as a proportion of the full time rate which is applicable to 38 ordinary hours.

(3) **Rate of Wage**

Employees shall be entitled to a weekly wage being a percentage of the minimum weekly rate of pay prescribed under the Minimum Conditions of Employment Act 1993 from time to time, which equates to the same percentage of the Capacity Rate at which their productivity and skills are fairly assessed in accordance with the process established under this clause.

(4) **Assessment of Capacity**

(a) An employee's assessed capacity rate shall be determined by consultation between the employer, the employee and the union in accordance with agreed measurement criteria, pending the development of formal industry measurement criteria.

(b) The agreed measurement criteria shall take into account the productivity of skills of the employee relative to the productivity and skills of an employee having entitlement to the full Minimum Wage, as well as the support and other costs associated with the employment of the employee.

(c) Such assessed capacity rate shall range from 5% to 100%.

(d) The parties to the agreement are committed to developing a formal industry measurement criteria for general application in the industry.

(5) **Review of Assessment**

(a) The assessment of the applicable percentage should be subject to annual performance evaluation or earlier on the basis of a reasonable request for such a review. The process shall be in accordance with the procedure for assessing capacity referred to in subclause (4) hereof.

(b) There will be a minimum period of three (3) months between assessments.

(6) **Workplace Adjustment**

The employer agreement 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.

(7) **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 utilised.

(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 rate payable to the employee during the trial period shall be determined by consultation between the employer, the employee and the union.

(d) Work trials should include induction or training as appropriate to the job being trialed.

(8) The conditions of employment to apply during a trial period or in a continuing employment relationship shall be agreed in writing in order to satisfy the provisions of Section (9) of the Minimum Conditions of Employment Act 1993.

(9) In the negotiation or determination of wages under this clause all parties shall take into account that the additional costs from increased wages and related costs do not jeopardise the continuing operations of the employer or prevent or restrict the recruitment of disabled employees in the future.

(10) The wage rates payable under this clause shall be altered in accordance with any change to the Minimum weekly Rate of pay prescribed under the Minimum Conditions of Employment Act 1993 applicable from time to time with effect from the same date as the change to the Adult Minimum Weekly Rate.

(11) The provisions of this agreement shall come into operation and effect on and from 1 January 1997.

5.—DISPUTE SETTLEMENT PROCEDURES

Where a dispute concerning the operation of this agreement arises, the following steps shall be taken:

(1) Step 1

A copy of the grievance procedure set out in section 2.2.2. 10/1 of the employees Management Handbook shall be provided to the complainant where it is relevant and that procedure followed in the first instance.

In all other cases, as soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the employee or employees concerned and where the employee(s) so request(s), the Union workplace representative.

(2) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the appropriate senior representative of the employer, the employee or employees concerned and where the employee(s) so request(s), the Union workplace representative who shall attempt to settle the dispute.

(3) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the employer, the employee or the employees concerned and where the employee(s) so request(s), an official of the Union who shall attempt to settle the dispute.

(4) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

6.—NUMBER OF EMPLOYEES BOUND

The parties estimate that 40 employees will be bound by this agreement.

Signed in PERTH of this day of 1997

The Common Seal of

THE ROYAL WA INSTITUTE FOR THE BLIND (INC.)

was hereunto affixed by authority of the Council of Management in the presence of:

(signed by A Ivdi)

President

common seal affixed

(signed by P Bird)

Councillor

Signed on behalf of

THE DISABLED WORKERS UNION OF WESTERN AUSTRALIA

(signed by R A Hughes)

President

(signed by G Cassidy)

Secretary

SIMSMETAL LIMITED (PRODUCTION AND MAINTENANCE) ENTERPRISE BARGAINING AGREEMENT
No. AG 101 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

Simsmetal Limited.

No. AG 101 of 1997.

7 May 1997.

Order.

HAVING heard Mr G.C. Sturman as agent for the Applicant and Mr D. Healy, Manager of Operations for 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 14th day of April, 1997 entitled Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement be registered as an industrial agreement and is to replace the Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement No. AG 4 of 1995.

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

Schedule.

1.—TITLE

This Agreement shall be known as the Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Incidence and Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Definitions
8. Single Bargaining Unit
9. Training
10. Productivity Improvement Programme
11. Wages
12. Commitments
13. No extra claims
14. Additional Agreements
15. Review and Renewal of Agreement.
16. Dispute resolution

Signatories to Agreement

3.—AREA AND SCOPE

This Agreement shall apply to the Production and Maintenance sections of Simsmetal Limited with respect to thirty (30) employees engaged in classifications specified in Clause 10.—Wages hereof.

4.—INCIDENCE AND PARTIES BOUND

This Agreement shall apply to and be binding upon Simsmetal Limited and all persons in the classifications set out in Clause 10. — Wages employed at the operations in Spearwood and to the Automotive Foods Metals Engineering Printing and Kindred Industries Union of Workers Western Australia Branch.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 25th December 1996 and remain in operation until 21st December 1998 and will not continue in force after this date unless reviewed. All parties are committed to re-negotiating this Agreement and applying for it's replacement, or cancellation before the expiry date.

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award No. 13 of 1965.

(2) Where there is any inconsistency between this Agreement and the Awards stipulated, this Agreement shall prevail to the extent of the inconsistency.

7.—DEFINITIONS

(1) "**Company**" means Simsmetal Limited

(2) "**Union**" means the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers Western Australia Branch.

8.—SINGLE BARGAINING UNIT

(1) For the purposes of this Agreement and in accordance with the decision in the January 1992 Western Australian State Wage case, a single bargaining unit has been established by way of a Consultative Works Committee. This Committee shall be comprised of the following members—

three representatives of management; and

three members of the workforce to be representative of the various sections of the operations.

(2) The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation of the continuous improvement programme.

9.—TRAINING

(1) (a) The Consultative Committee will also act as a Training Committee to establish, implement and monitor a training programme applicable to the operations of Simsmetal Limited at Spearwood.

(b) It is the intention of the Committee that opportunities will be made available for further enhancement of both administrative and technical skills.

(c) Training may be on or off-the-job but will be accredited and linked to a competency-based career path.

(2) TRAINING

(a) All training will be competency-based, with clearly defined and agreed performance standards. Employees will have to demonstrate capability against these standards as part of the training process and additional training will be given as and when required.

(b) As far as possible, training will be self-paced and self-motivated and employees will be actively encouraged to participate in their own learning. Training will be consistent with the work skills identified through the process of a skills audit and job analysis. The role of every employee in training others is recognised and all employees will be given the opportunity to receive formal training. Emphasis will be given to training being consistent with the skills required for each area of operation.

(c) All external training will be conducted by accredited institutions or organisations and designed to enhance the flexibility of employees in performing various tasks.

(d) Wherever possible, all training is to be conducted during normal working hours; if this is not possible, and the Company has explored all avenues, then the employees will be flexible and make themselves available for training, at the appropriate rate of pay, outside of normal working hours.

(3) Areas of training identified by representatives of the workforce for inclusion in the programme are—

Customer Service

Total Quality Control and Management

Restricted Electrical Licences

Pneumatics

Hydraulics

Mobile and Stationary Machine Operation

Basic Maintenance Skills.

10.—PRODUCTIVITY IMPROVEMENT PROGRAMME

(1) In accordance with the terms of the January 1994 State Wage Case Decision, the following measures to achieve real and demonstrative gains in productivity, efficiency and flexibility have, or will be, implemented.

(2) Consultation and Communication—

Two-way communication between production and maintenance divisions and between management and employees will be maintained and enhanced via—

(a) Quarterly management report-back meetings with all employees.

(b) Monthly Consultative Committee meetings which, amongst other things, shall assess the achievements and gains in productivity at three-monthly intervals during the life of this Agreement.

(c) Weekly and daily tool box meetings to discuss production scheduling and reliability focussed maintenance programmes.

(3) Employee Involvement—

Employees are encouraged to become involved and to continue focusing on—

(a) Customer service, both internal and external

(b) Reduction in down time, waste and replacement parts wherever possible.

(c) Productivity projects to improve quality and output without increasing over-all costs.

(4) Performance Indicators—

(a) The Consultative Committee will develop a productivity and performance plan to identify and benchmark a number of performance indicators. The benchmarking process will use a 'best practice' policy in order to create an environment as well as a performance plan which will commit the parties to a simultaneous improvement in costs, quality and delivery.

(b) The two main groups with which performance indicators will be identified are—

(i) over-all Company performance measures applicable to the business;

(ii) improvement measures specific to the Production and Maintenance functions.

(c) Examples of over-all Company performance measures and improvements specific to production and maintenance are set out below as key performance indicators of inputs and outputs of the Company's operations.

Output KPI's

Ferrous—

Processed tonnes/man year	-	*Fragmentiser*
	-	*Other Processes*
Wages $/Tonne	-	*Fragmentiser*
	-	*Other Processes*
Maintenance Cost $/Tonne	-	*Fragmentiser*
	-	*Other*

Non-ferrous—

Processed Tonnes/man year	-	*Batteries*
	-	*Other*
Wages $/Tonne	-	*Batteries*
	-	*Other*
Maintenance cost (including labour)	-	*$/Tonne*

Resale—

Processed tonnes/man year	-	*Retail for re-roll*
	-	*Other*
Maintenance cost (including labour)	-	*$/tonne*

Input KPI's

Energy and fuels
Overtime levels
Consumables
Work organisation and yard efficiencies
(i.e.—handling levels, vehicular turnaround times)
Machine and plant down-time
Maintenance programme performance
Administration costs and procedures

(5) Labour Flexibilities—

(a) Spread of Hours—

The ordinary daily hours of work shall be 7.6, worked continuously, except for meal and rest breaks, between the hours of 6.00 am and 8.00 pm Monday to Friday inclusive.

Starting and finishing times of ordinary hours, are for example normally—

Start	*7.00 am / 7.30 am*	*Start*	*11.00 am*
Smoko	*10.00 am / 10.00 am*	*Smoko*	*2.00 pm*
Lunch	*12.30 pm / 12.30 pm*	*Lunch*	*6.00 pm*
Finish	*3.30 pm / 4.00 pm*	*Finish*	*8.00 pm*

Employees may be changed from one period of ordinary hours to another, provided that at least 24 hours notice is given. A short period of notice may be acceptable in exceptional circumstances, provided there is mutual agreement between the employee/s concerned and the Yard Manager.

(b) Meal Breaks—

To meet production demands, an employee may be required to work up to six hours without a break for a meal. However, the Company shall firstly make all attempts to ensure an employee is not compelled to work longer than five hours without a meal break.

(c) Excessive or Emergency Overtime—

(i) When overtime work is necessary, it shall be so arranged that an employee has at least ten (10) consecutive hours off duty between the work of successive days.

(ii) In exceptional circumstances (e.g. export ship loading and major machine/plant breakdown) and by agreement between the employee/s concerned and the Yard Manager, the ten (10) consecutive off-duty hours between the work on successive days may be reduced to (8) eight.

(d) Incidental or Peripheral Skills—

(i) Production employees, when trained and competent to do so, are to perform routine and preventive maintenance tasks using company-provided tools and are also to assist where required, in break-down repairs. These could include—

* Servicing and lubrication of mobile equipment
* Changing blades on mobile shears
* Assisting with blade changes on the Harris Shear
* Changing/replacing consumables on the Fragmentiser

(ii) Maintenance employees, when trained and competent to do so, shall perform a wider range of duties which are incidental or peripheral to their main tasks or functions, possibly including production tasks, without loss of pay.

(e) Staff Assisting Wages Employees—

Engineering, commissioning and supervisory staff may use tools when carrying out inspections, testing equipment or when instructing and training employees, provided such actions do not attempt to replace the jobs of employees covered by this Agreement.

(f) Annual Leave Periods—

When major interruptions to production or equipment failures occur the employer may, where there is no suitable work for re-deployment of employees so affected, direct such employees to take up to one week of annual leave, provided a minimum of 24 hours notice is given to such employees.

(6) Long Term Objectives—

The following issues will be addressed by the parties and the Consultative Committee during the life of this Agreement.

(a) Career Path Development—

(i) The parties are committed to developing new classification definitions appropriate to the work and skills applied at the Simsmetal W.A. operations in Spearwood. The Award career path structure shall form the basis for skill levels appropriate to the operations and a training programme will be developed consistent with such skill level outcomes. Through the structure of the Consultative Committee, the parties are committed to developing the definitions within (12) twelve months from commencement of this Agreement.

(ii) In line with career path development, an annual performance appraisal will be conducted with all employees to assist them determine and achieve personal career path outcomes consistent with Company goals. If employees so choose a representative of the workforce shall be in attendance during the appraisal process.

(b) Teamwork—

(i) The parties are committed to examining work organisation practices in the Spearwood operations at all levels during the life of this Agreement.

(ii) The object of this review is to introduce a "team work" concept in and across the various departments.

11.—WAGES

(1) Wage increases are payable as follows—

	Existing Rate $	22.12.96 4% Increase $	22.12.97 4% Increase $	Total Rate $
Engineering Production Worker—				
C14	389.88	15.60	15.60	421.08
C13	407.89	16.32	16.32	440.53
C12	436.38	17.46	17.46	471.30
C11	458.21	18.33	18.33	494.87
Engineering Tradesperson—				
C10	481.11	19.24	19.24	519.59
C 9	505.17	20.21	20.21	545.59
C 8	529.50	21.18	21.18	571.86
C 7	555.96	22.24	22.24	600.44
C 6	601.39	24.06	24.06	649.51
C 5	625.44	25.02	25.02	675.48

(2) The percentage increase and total rate shall be payable on and from the dates agreed between the parties as set out herein.

(3) The wage rates specified in subclause (1) hereof shall be payable for all purposes.

(4) Within (12) twelve months from the date of operation of this Agreement, all employees shall have been assessed through the skills audit and job analysis process prescribed by Clause 9.—Training hereof. Employees will be re-classified to the level appropriate to their existing task, experience, knowledge and future job requirements. Training will be provided where necessary to enable employees to reach their determined skill level. All employees will be remunerated by an upgrade of (1) one classification level in addition to the increases set out in subclause (1) hereof, in recognition of attaining the new skill level.

4.1 Re-classification of employees is subject to the individual employee meeting the required skill level. Employees who are not willing to upgrade their skill levels will not be re-classified.

12.—COMMITMENTS

(1) The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(2) This Agreement shall not operate to cause any employee to suffer a reduction in ordinary-time earnings, or to depart from the standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

13.—NO EXTRA CLAIMS

There shall be no further wage increases during the term of this Agreement.

The parties agree that any variations to the Metal Trades General Award or any other variation to Award wage rates will not cause an increase to the wage rates for employees of the Company during the term of this Agreement.

However, four months prior to the expiration of this Agreement a review will be conducted to focus discussion on any State Wage Case decision yielding increases in excess of payments made during the term of this Agreement. Such excesses can be discussed when forming the basis of the next Agreement, together with further productivity gains and comparisons in achievements of the agreed targets contained herein.

14.—ADDITIONAL AGREEMENTS

1. i Workers compensation journey cover to and from work will be provided to the employees by the Company.

   ii Workers compensation journey cover to and from work will become null andvoid should any deviation from the normal route have taken place.

2. Rostered days off for a trial period of six (6) months (.4 x 19 = 7.6 hrs = 20th day off)

15.—REVIEW AND RENEWAL OF AGREEMENT

The Consultative Committee shall assess achievements and productivity gains during the term of this Agreement. The parties are also committed to reviewing this Agreement through the structure of the Consultative Committee four months prior to the expiration with the objective of renewing or replacing the Agreement.

16.—DISPUTES RESOLUTION

Any question difficulty or dispute shall be dealt with pursuant to the provisions of clause 34 of the Metal Trades (General) Award.

SIGNATORIES

Common Seal

Signed for and on behalf of the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers Western Australia Branch

.....(Signed).....
JOHN SHARP-COLLETT

Signed for and on behalf of Simsmetal Limited

.....(Signed).....
PETER R. BIRD

Signed as members of the elected Consultative Committee at Simsmetal Limited, Spearwood

.....(Signed).....
RIMA TE WAITI

.....(Signed).....
MIKE PEREZ

.....(Signed).....
GERARD WHELAN

.....(Signed).....
BRUCE ATWELL

Dated this day of 1997.

SJM ELECTRICAL ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 55 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephens, Jones Nominees trading as SJM Electrical

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. AG 55 of 1997.

SJM Electrical Enterprise Bargaining Agreement 1996.

CHIEF COMMISSIONER W S COLEMAN.

11 April 1997.

Order.

HAVING heard Mr D Sproule on behalf of the Applicant and Mr P Carter 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 SJM Electrical Enterprise Bargaining Agreement 1996 be registered in accordance with the following Schedule and such shall have effect from the beginning of the first pay period commencing on or after the 11th day of March 1997.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the SJM Electrical Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Application of Agreement
7. No Extra Claims
8. Objectives of Agreement
9. Dispute Procedure
10. Consultative Processes
11. Training
12. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13. Monitoring of Agreement
14. Wages
15. Signatories

3.—AREA AND SCOPE

This Agreement shall apply to SJM Electrical, and to approximately 8 employees who are members of, or who are eligible to become members of the Union set out in Clause 4.—Parties Bound, and who are engaged in the classifications set out in Clause 14.—Wages of this Agreement.

This Agreement shall operate within the State of Western Australia.

4.—PARTIES BOUND

This Agreement is made this 22 day of January 1997 between—

(1) Stephens, Jones Nominees Pty Ltd T/as SJM Electrical. Hereinafter referred to in this Agreement as SJM Electrical.

(2) The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 1st January 1996 and shall remain in force until 31st December 1997, or its earlier cessation in accordance with subclause (2) of Clause 6.—Application of Agreement.

6.—APPLICATION OF AGREEMENT

(1) (a) Where the parties to this Agreement are also parties to an Agreement which applies to a specific project, the parties agree to discuss whether the provisions of this Agreement will apply to that project in lieu of the specific Project Agreement.

(b) If it is agreed that the specific Project Agreement applies, then the conditions of this Agreement shall not apply.

(c) If it is agreed that meaningful productivity increases can be achieved, but this Agreement cannot be implemented in full, then wage increases available from this Agreement may be introduced on a "pro rata" basis. The increases available from this Agreement will be a maximum of those contained in Clause 14.—Wages of this Agreement.

(2) The parties agree that if, following a review of this Agreement by the parties and the Consultative Committee, and agreement is reached that this Agreement places and continues to place SJM Electrical and its employees at a competitive disadvantage, and productivity and flexibility have not improved then SJM Electrical have the option of reverting to work under the Award.

(3) No part of this Agreement shall be used by the Union, SJM Electrical or its employees as evidence or example before any Industrial Tribunal or proceedings not directly concerned with work covered under this Agreement.

(4) No part of this Agreement shall be otherwise used by the Union, SJM Electrical or its employees as evidence or example before any Industrial Tribunal or any other contractor.

(5) (a) Where a specific project or site agreement is applicable to work undertaken by SJM Electrical 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.

(b) (i) Where a specific project or site agreement is applicable to work SJM Electrical are contracted to carry out, and SJM Electrical 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.

(ii) Where the parties are unable to agree upon the applicability or otherwise of this Agreement to the work both parties acknowledge the other party's legal rights to protect their respective interests.

(iii) Both parties have the option of suspending this Agreement effective immediately provided that the suspension shall only extend to the application of this Agreement to the work on the specific project or site.

(6) Pursuant to this Agreement and its measures to achieve gains in productivity, efficiency and flexibility, SJM Electrical shall provide the rates of pay prescribed in Clause 14.—Wages which shall be paid in lieu of the minimum weekly rate provided for in the Award.

(7) This Agreement shall operate in conjunction with the Electrical Contracting Industry Award F22 of 1978 (the Award). Where any inconsistency exists between this Agreement and the Award, this Agreement will take precedence to the extend 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 in Clause 14.—Wages of this Agreement.

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, SJM Electrical 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 SJM Electrical operations;

(b) encouraging SJM Electrical 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, e.g. start and finish at the designated workplace at normal start and finish times;

(h) establishing measures to ensure ordered relations exist between SJM Electrical and the union on SJM Electrical work sites;

(i) enhancing job satisfaction;

(j) improving SJM Electrical competitiveness to help improve job security.

(3) It is agreed that the measures in this Agreement, properly implemented and carried out, will assist in the achievement of those objectives.

9.—DISPUTE PROCEDURE

The parties undertake that when a question or difficulty arises, or when there is a matter in dispute between the union and SJM Electrical, or a matter arises which is likely to cause a dispute for any reason whatsoever, the procedures contained in the Award shall be followed.

10.—CONSULTATIVE PROCESSES

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this agreement, are enhanced by genuine consultation between SJM Electrical and its employees.

(2) (a) The Consultative Committee (the Committee) may be established within SJM Electrical. The composition and size of Committee shall be determined by the parties.

(b) The Committee will initially be chaired by SJM Electrical's Contract Manager or nominee. A representative of the union may attend meetings. A representative of the ECA may attend the meetings.

(3) (a) The role of the Committee is to act as a forum for consultation, guidance and advice between SJM Electrical and its employees on matters such as monitoring and reviewing—

(i) implementation of this agreement and its objectives;

(ii) determination of benchmarks, best practice and continuous productivity improvement;

(iii) the Skills Formation Programme and ancillary training;

(iv) the Productivity Improvement Programme;

(v) communication between SJM Electrical and its employees; and

(vi) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(b) 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 SJM Electrical.

11.—TRAINING

(1) SJM Electrical 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 SJM Electrical at the forefront of the industry.

(2) The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of SJM Electrical, commitment to training and skill development is required. Accordingly, the parties commit themselves to—

(a) developing a more highly skilled and flexible workforce; and

(b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by SJM Electrical.

(3) It is agreed that a training programme be developed consistent with—

(a) the current and future skill needs of SJM Electrical;

(b) the size, structure and nature of SJM Electrical; and

(c) the need to develop vocational skills relevant to SJM Electrical and the electrical contracting industry.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for SJM Electrical 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

It is agreed that employees will be flexible in the following areas—

(a) where it is agreed between SJM Electrical and the majority of affected employee(s), SJM Electrical may reschedule ordinary working hours;

(b) the spread of hours may be altered by agreement between SJM Electrical and the majority of employees in the plant or section(s) concerned;

(c) agreement to reschedule ordinary working hours and to alter the spread of hours shall not unreasonably be withheld;

(d) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of SJM Electrical in conjunction with the provisions paragraph (1)(e) and (f) of Clause 11.—Hours of the Award; and

(e) flexibility of rostering employees' days off. It is agreed that when SJM Electrical wish to reschedule an RDO, SJM Electrical 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 the Award, Clause 12.—Overtime. In particular the employees agree to strictly adhere to subparagraphs (2)(f)(i) and (ii) of Clause 12.—Overtime.

"(2)(f)(i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

"(2)(f)(ii) The union party to this award, or employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon working or overtime in accordance with the requirements of this subclause."

(b) Overtime may be worked on a RDO weekend as required by SJM Electrical, SJM Electrical will endeavour to give employees who are required to work on a RDO weekend such prior notice as is reasonable in all the circumstances.

(c) SJM Electrical will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at SJM Electrical's discretion, provided that this will not disadvantage SJM Electrical in any way.

(d) In conjunction with the roster system, SJM Electrical will select the employees required to work overtime according to the needs of SJM Electrical and the particular project.

(e) When overtime has been scheduled and these employees have 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 SJM Electrical, 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 SJM Electrical 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

It is agreed that employees issued with SJM Electrical uniforms and clothing shall wear such items during all work hours and each employee shall maintain his/her uniform in a respectable condition as approved by SJM Electrical.

It is agreed that employees who have been issued with clothing will have such uniforms/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 SJM Electrical Property

(a) It is agreed that employees will treat all SJM Electrical property, plant and equipment 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 SJM Electrical if lost through his/her negligence. See paragraph (2)(b) of Clause 18.—Special Rates and Provisions of the award.

(c) It is agreed that all employees are committed to reducing the cost of maintenance and minimising theft and time spent looking for equipment not returned to its designated storage area.

(9) Company Vehicles

Where an employee is provided the use of a company vehicle to conduct company business that employee shall ensure that—

(a) the vehicle is kept clean and free of rubbish;

(b) the vehicle's oil and fuel requirements are regularly checked to maintain the vehicle in a ready-for-use condition; and

(c) any defects that come to the employee's attention are reported to SJM Electrical immediately.

(10) Care of Consumables

It is agreed that all employees are continued to ensure maximum usage of 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.

(11) Quality Management

It is agreed that employees shall co-operate fully with the development and implementation of SJM Electrical quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by SJM Electrical. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(12) Time Sheets and Day Labour Sheets

(a) It is agreed that employees will punctually and correctly fill of time sheets for each pay period.

(b) It is agreed that where required by SJM Electrical, operating procedures, e.g. service work and day works, employees shall promptly and correctly fill out SJM Electrical Day Labour Sheets.

(13) 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; and

(iv) work is not being carried out in accordance with the specifications plans or with the SAA Wiring Rules.

(b) Employees will take an active role to ensure that sufficient quantities and correct types of material are available at the job site to maximise time at the workface.

(c) Employees will take an active tole in care and maintenance of the workplace to eliminate safety hazards.

(14) 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 SJM Electrical.

(b) Employees' duties shall include any work for which the employee has requisite qualifications required in connection with the Electrical Contracting Industry.

(15) Payment of Wages

Wages being paid by Electronic Funds Transfer (EFT) is encouraged.

(16) 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 suite the convenience of the employer.

(iii) Refreshments may be taken by employees during the rest period but the period of 10 minutes shall not be exceeded under any circumstances.

(iv) An employer who satisfied 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 suite the convenience of SJM Electrical.

(17) Unauthorised Absences

(a) SJM Electrical 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) SJM Electrical shall be under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with—

(i) award provisions; or

(ii) an instruction from SJM Electrical that the employee may leave site without loss of pay.

(18) Safety Disputes

(a) Where a SJM Electrical employee is affected by a safety dispute an employee shall comply with SJM Electrical 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 SJM Electrical instructions shall forfeit wages for time not worked.

(19) Inclement Weather (Wet or Hot)

(a) Where a SJM Electrical employee is affected by inclement weather, an employee shall comply with SJM Electrical's instructions to either—

(i) continue work when the area in which the employee is working is not affected by the inclement weather; or

(ii) accept a transfer to work in an area of the site not affected by the inclement weather; or

(iii) accept a transfer from one site to another site not affected by the inclement weather; or

(iv) leave the site without loss of pay.

(b) Where SJM Electrical requires an employee to traverse open ground, SJM Electrical will provide the employee with protective clothing. Such clothing will remain the property of SJM Electrical and shall be returned to SJM Electrical. Employees shall take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

(c) An employee shall not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.

(d) An employee who does not comply with SJM Electrical instructions shall forfeit wages for time not worked.

(20) All Other Questions Difficulties or Disputes

In conjunction with Clause 9.—Dispute Procedure, of this Agreement the following shall apply—

(a) Where a SJM Electrical employee is affected by any other dispute, an employee shall comply with SJM Electrical's instructions to either—

(i) continue to 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 transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with SJM Electrical's instructions shall forfeit wages for time not worked.

(21) Movement of Material

It is agreed that employees will, where reasonably safe to do so and in accordance with Worksafe WA requirements, load and unload material, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

(22) New Technology

It is agreed that employees will fully utilise all new technological advances implemented by including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

(23) 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.

(24) Client Satisfaction

(a) The employees will take an active role in ensuring client satisfaction and acknowledge that client relationships is important to the growth of and its ability to offer continuing employment to its employees.

(b) All employees agree to treat customers with courtesy and respect and to consider the customers interests in their actions.

(c) SJM Electrical and its employees recognise that a commitment to complete the project work on time and on budget is essential to the ongoing viability of the company and the prospects of long term employment of employees.

13.—MONITORING OF AGREEMENT

The parties to this Agreement shall continually monitor the development of the Agreement and shall review the effect of this Agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this agreement places them at a disadvantage then the parties shall reconvene to resolve the issue.

14.—WAGES

The following wage rates shall apply only upon registration of this Agreement by the Western Australian Industrial Relations Commission in the first full pay period to commence on or after 1st July 1994, subject to the successful implementation of the principles contained within this document.

Classification	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 $
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
Electrical Installer	542.43	562.77	583.87	605.77
Electrical Fitter	542.43	562.77	583.87	605.77
Instrument Fitter/Electrical Grade 1	562.51	583.61	605.49	628.20
Linesperson Grade 1	532.43	562.77	583.87	605.77
Cable Jointer	542.43	562.77	583.87	605.77
Linesperson Grade 2	521.88	541.45	561.76	582.82
Electrical Assistant	459.59	476.83	494.71	513.26

15.—SIGNATORIES

IN WITNESS whereof the parties have signed this Agreement.

For and on behalf of Stephens, Jones Nominees (A.C.N. 008 967 299) T/as SJM Electrical

J.K. Stephens
Director

P. Stephens
Director/Secretary

Common Seal
Affix Company Seal

For and on behalf of Communications, Electrical, Electronic Energy, Information, Postal, Plumbing and allied workers Union of Australia, Electrical and Engineering Division, Western Australian Branch

P. Carter
Signed

Les McLaughlan
Witnessed

Common Seal
Affix Union Seal

ST ANDREW'S GREEK ORTHODOX GRAMMAR SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 1996
No. AG 56 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers; The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

St Andrew's Greek Orthodox Grammar School.

No. AG 56 of 1997.

St Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1996.

COMMISSIONER A.R. BEECH.

15 April 1997.

Order.

HAVING heard Ms T. Howe and Mr N. Whitehead 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 St Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1996 filed in the Commission on the 14th day of February 1997 and as subsequently amended by the parties be registered effective from the 2nd day of April 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the St. Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1996 and replaces the St. Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1995.

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. General Conditions
11. Extra Curricular Activities
12. Agreed Efficiency Improvements
13. Matters for Ongoing Discussion
14. Dispute Resolution Procedure
15. No Further Claims
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between St. Andrew's Greek Orthodox Grammar School (the School) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), and The Australian Liquor, Hospitality and Miscellaneous Workers Union (LHMU), registered organisations of employees.

4.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Independent Schools' Teachers' Award 1976, the Independent Schools Administrative and Technical Officers

Award 1993, and the Teachers' Aides' (Independent Schools) Award 1988, (the awards).

Where there is any inconsistency between this agreement and the relevant award, this Agreement will prevail to the extent of the inconsistency.

5.—SCOPE OF AGREEMENT

This agreement shall apply to all staff who are employed by St Andrew's Greek Orthodox Grammar School under the terms of the relevant awards.

The number of employees covered by this agreement is 15.

6.—DATE AND DURATION OF AGREEMENT

This Agreement shall come into effect on 2 April 1997 and shall apply until 30 April 1997.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the School and reached full 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) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The School and the staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the staff's own time.

9—SALARY RATES

(1) (a) Teachers—

The salary rates in the relevant award and the St Andrews Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1995 shall be replaced by salary schedules as per Appendix I.

(b) Administrative and Technical Officers—

The salary rates in the relevant award shall be replaced by salary schedules as per Appendix II.

(c) Teachers' Aides—

The salary rates in the relevant award shall be replaced by salary schedules as per Appendix III.

(2) In the event of any safety net adjustments being applied to the award such adjustments shall be absorbed in the above increases.

10.—GENERAL CONDITIONS

The School shall make provisions for the following—

(1) A 10 per cent discount on School fees for any student whose parent is employed by the School.

(2) Staff agree that there will be no teacher aide in the Junior Primary classes for the life of this agreement, providing class numbers remain relatively unchanged.

(3) Staff agree that in years 4-7 there will be no relief teacher employed for single day absences across this group for the life of this agreement providing class numbers remain relatively unchanged.

11.—EXTRA CURRICULAR ACTIVITIES

(1) The parties recognise the involvement of the School in the Greek Community.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of staff in activities undertaken outside regular classroom contact.

(a) The efforts of staff who contribute significantly to the life and values of the School should be recognised.

(b) There will be collaborative planning between the Principal of the School and staff in the allocation of staff to all activities conducted by the School.

(c) The competence, skills and qualifications of staff, including those employed part-time, will be considered in the planning and allocation of activities conducted by the School.

(d) Allocation of duties to individual staff members will show due consideration for the staff member's professional development and other commitments and responsibilities.

(3) There will be Staff representation at—

P & F Festival
High School Development Committee
School Development Plans

(4) Staff will participate in Church services on the following dates each year—

25 March—National Day

21 March—St Konstantine & Helene

15 August—Dormition of Our Lady

28 October—"OXI" Day

Where these church services fall on non-school days, staff will be represented at these events.

12.—AGREED EFFICIENCY IMPROVEMENTS

The following subclauses apply only to teachers.

(1) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers, employed for five days or less, may be engaged and paid by the day or half day. A half day is determined as the hours usually worked in the school prior to or immediately following the lunch break.

(2) First Teaching Appointment

A teacher appointed to his or her first teaching position who, at the end of the initial twelve months, is deemed by the School not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to subclause (2) of Clause 2.—Induction of Appendix 1 of the Award.

(3) Long Service Leave

A teacher who on or from January 1995 has eight (8) years of continuous service and has accrued a minimum entitlement of ten weeks long service leave shall be entitled to take such leave. The period taken will correspond with a School term.

13.—MATTERS FOR ONGOING DISCUSSION

(1) The Board gives an undertaking that the matter of payment of HECS fees for staff undertaking relevant studies shall be discussed as part of the next Agreement in 1997.

(2) Negotiations for a further increase of 8% from 1 January 1997 to effectively maintain the current level above the Education Department salaries shall commence in October in 1996 and shall include the understanding that there will be no further trade-offs in relation to this increase.

14—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this Agreement.

The parties to the dispute shall attempt to resolve the grievance in a timely manner and with due regard to the rights of the parties, using the following procedure—

(1) The staff member shall raise the issue with the Principal who will attempt to resolve the matter expeditiously.

(2) If the issue cannot be resolved satisfactorily the Principal will convene a meeting of the parties (and their representatives if desired by the parties) to discuss and resolve the grievance.

(3) Should this determination not resolve the matter, either of the parties may refer the grievance to the

Western Australian Industrial Relations Commission or the Industrial Relations Court of Australia.

15—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 within the period of this agreement unless they are consistent with the State Wage Case Principles.

16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

17.—SIGNATORIES

Roy Browning
(Name of signatory in block letters)
St Andrew's Greek Orthodox Grammar School

T.I. Howe
(Name of signatory in block letters)
Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

Helen Creed
(Name of signatory in block letters)
The Australian Liquor, Hospitality and Miscellaneous Workers Union

APPENDIX I

TEACHERS

STEP	1-JAN-96 $ PER ANNUM	1-JUL-96 $ PER ANNUM
1	24,068	24,550
2	25,531	26,041
3	26,992	27,532
4	28,680	29,254
5	30,255	30,860
6	31,604	32,236
7	32,954	33,613
8	34,640	35,333
9	36,496	37,226
10	38,015	38,775
11	39,364	40,151
12	41,051	41,872
13	42,739	43,593

APPENDIX II

ADMINISTRATIVE AND TECHNICAL OFFICERS AWARD 1993

LEVEL SALARY	1-JAN-96 $ PER ANNUM	1-JUL-96 $ PER ANNUM
LEVEL 1	19,787	20,183
	20,049	20,450
	20,310	20,716
	20,572	20,983
	20,833	21,250
	21,095	21,517
LEVEL 2	21,879	22,317
	22,402	22,850
	22,925	23,384
	23,448	23,917
	23,971	24,451
	24,494	24,984
LEVEL 3	25,540	26,051
	26,168	26,691
	26,795	27,331
	27,423	27,971
	28,051	28,612
	28,678	29,252
LEVEL 4	27,109	27,651
	28,155	28,718
	29,201	29,785
	30,247	30,852
	31,293	31,919
	32,339	32,986

APPENDIX III

TEACHERS' AIDES

STEP	1-JAN-96 $ PER ANNUM	1-JUL-96 $ PER ANNUM
1	10.51	10.72
2	10.70	10.92
3	10.91	11.13
4	11.16	11.39
5	11.47	11.70
6	11.86	12.09
7	12.18	12.42
8	11.93	12.17
9	12.25	12.50
10	12.58	12.83
11	12.89	13.15
12	13.09	13.35
13	13.24	13.50

ST ANDREW'S GREEK ORTHODOX GRAMMAR SCHOOL (ENTERPRISE BARGAINING) AGREEMENT 1997
No. AG 86 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers; The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

St. Andrew's Greek Orthodox Grammar School.

No. AG 86 of 1997.

St Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1997.

30 April 1997.

Order.

HAVING heard Ms T. Howe on behalf of the Applicants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the St Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1997 filed in the Commission on the 27th day of March 1997 be registered effective on and from the 29th day of April 1997.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the St. Andrew's Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1997 and replaces the St. Andrew's Greek Orthodox Grammar School (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. General Conditions
11. Extra Curricular Activities
12. Agreed Efficiency Improvements
13. Matters for Ongoing Discussion
14. Dispute Resolution Procedure
15. No Further Claims
16. No Precedent
17. No Reduction
18. Signatories
Appendix I
Appendix II
Appendix III

3.—PARTIES TO THE AGREEMENT

This agreement is made between St. Andrew's Greek Orthodox Grammar School (the School) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (LHMU), registered organisations of employees.

4.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Independent Schools' Teachers' Award 1976, the Independent Schools Administrative and Technical Officers Award 1993, and the Teachers' Aides' (Independent Schools) Award 1988, (the awards).

Where there is any inconsistency between this agreement and the relevant 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 by St Andrew's Greek Orthodox Grammar School under the terms of the relevant awards.

(2) The number of employees covered by this agreement is 15.

6.—DATE AND DURATION OF AGREEMENT

This Agreement shall come into effect on and from 29 April 1997 and shall apply until 31 December, 1997.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the School and reached full 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) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The School and the staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the staff's own time.

9—SALARY RATES

(1) (a) Teachers—

The salary rates in the relevant award and the St Andrews Greek Orthodox Grammar School (Enterprise Bargaining) Agreement 1996 shall be replaced by salary schedules as per Appendix I.

(b) Administrative and Technical Officers:

The salary rates in the relevant award shall be replaced by salary schedules as per Appendix II.

(c) Teachers' Aides:

The salary rates in the relevant award shall be replaced by salary schedules as per Appendix III.

(2) In the event of any safety net adjustments being applied to the awards such adjustments shall be absorbed in the above increases.

10.—GENERAL CONDITIONS

The School shall make provisions for the following—

(1) A 10 per cent discount on School fees for any student whose parent is employed by the School.

(2) Teacher aides will be provided in the Pre Primary and Junior Primary classes. The time provision for teachers aides will be by mutual agreement between the teacher concerned and the Principal.

(3) There will be relief teachers employed for all teacher absences except in extra ordinary circumstances.

11.—EXTRA CURRICULAR ACTIVITIES

(1) The parties recognise the involvement of the School in the Greek Community.

(2) The parties recognise that the following principles apply in addressing the fair and reasonable participation of staff in activities undertaken outside regular classroom contact.

(a) The efforts of staff who contribute significantly to the life and values of the School should be recognised.

(b) There will be collaborative planning between the Principal of the School and staff in the allocation of staff to all activities conducted by the School.

(c) The competence, skills and qualifications of staff, including those employed part-time, will be considered in the planning and allocation of activities conducted by the School.

(d) Allocation of duties to individual staff members will show due consideration for the staff member's professional development and other commitments and responsibilities.

(3) There will be Staff representation at—

P & F Festival
High School Development Committee
School Development Plans

(4) Staff will participate in Church services on the following dates each year—

25 March—National Day
21 March—St Konstantine & Helene
15 August—Dormition of Our Lady
28 October—"OXI" Day

Where these church services fall on non-school days, staff will be represented at these events.

12.—AGREED EFFICIENCY IMPROVEMENTS

(1) The following subclauses apply only to teachers—

(a) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers, employed for five days or less, may be engaged and paid by the day or half day. A half day is determined as the hours usually worked in the school prior to or immediately following the lunch break.

(b) First Teaching Appointment

A teacher appointed to his or her first teaching position who, at the end of the initial twelve months, is deemed by the School not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to subclause (2) of Clause 2.—Induction of Appendix 1 of the award.

(c) Long Service Leave

A teacher who on or from January 1995 has eight (8) years of continuous service and has accrued a minimum entitlement of ten weeks long service leave shall be entitled to take such leave. The period taken will correspond with a School term.

(2) Teachers' Aides' Long Service Leave

(a) As from 1 January 1997 a Teachers' Aide's entitlements to paid long service leave will accrue at the rate of 1 week per year of service.

(b) An Aide shall be entitled to paid long service leave on the accrual of 10 weeks of such leave.

(c) Pro-rata long service leave shall be paid after 7 years, on termination of service.

13.—MATTERS FOR ONGOING DISCUSSION

The Board gives an undertaking that the matter of payment of HECS fees for staff undertaking relevant studies shall be discussed as part of the next Agreement.

14—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this Agreement.

The parties to the dispute shall attempt to resolve the grievance in a timely manner and with due regard to the rights of the parties, using the following procedure—

(1) The staff member shall raise the issue with the Principal who will attempt to resolve the matter expeditiously.

(2) If the issue cannot be resolved satisfactorily the Principal will convene a meeting of the parties (and their representatives if desired by the parties) to discuss and resolve the grievance.

(3) Should this determination not resolve the matter, either of the parties may refer the grievance to the Western Australian Industrial Relations Commission or the Industrial Relations Court of Australia.

15—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 within the period of this agreement unless they are consistent with the State Wage Case Principles.

16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

17.—NO REDUCTION

Nothing contained herein shall entitle the school to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

18.—SIGNATORIES

Atha Limnios
(Name of signatory in block letters)
St Andrew's Greek Orthodox Grammar School

T.I. Howe
(Name of signatory in block letters)
Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

Helen Creed
(Name of signatory in block letters)
The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

APPENDIX I

INDEPENDENT SCHOOLS' TEACHERS' AWARD 1976

STEP	1 January 96 $ per annum	1 July 96 $ per annum	1 January 97 $ per annum
1	24,068	24,550	26,514
2	25,531	26,041	28,124
3	26,992	27,532	29,734
4	28,680	29,254	31,594
5	30,255	30,860	33,328
6	31,604	32,236	34,814
7	32,954	33,613	36,302
8	34,640	35,333	38,159
9	36,496	37,226	40,204
10	38,015	38,775	41,877
11	39,364	40,151	43,363
12	41,051	41,872	45,221
13	42,739	43,593	47,080

APPENDIX II

ADMINISTRATIVE AND TECHNICAL OFFICERS AWARD 1993

Level Salary	1 January 96 $ per annum	1 July 96 $ per annum	1 January 97 $ per annum
LEVEL 1	19,787	20,183	21,797
	20,049	20,450	22,086
	20,310	20,716	22,373
	20,572	20,983	22,661
	20,833	21,250	22,950
	21,095	21,517	23,238
LEVEL 2	21,879	22,317	24,102
	22,402	22,850	24,678
	22,925	23,384	25,254
	23,448	23,917	25,830
	23,971	24,451	26,407
	24,494	24,984	26,982
LEVEL 3	25,540	26,051	28,135
	26,168	26,691	28,826
	26,795	27,331	29,517
	27,423	27,971	30,208
	28,051	28,612	30,900
	28,678	29,252	31,592
LEVEL 4	27,109	27,651	29,863
	28,155	28,718	31,015
	29,201	29,785	32,167
	30,247	30,852	33,320
	31,293	31,919	34,472
	32,339	32,986	35,624

APPENDIX III

TEACHERS' AIDES' (INDEPENDENT SCHOOLS) AWARD 1988

STEP	1 January 96 $ per annum	1 July 96 $ per annum	1 January 97 $ per annum
1	10.51	10.72	11.58
2	10.70	10.92	11.79
3	10.91	11.13	12.02
4	11.16	11.39	12.30
5	11.47	11.70	12.63
6	11.86	12.09	13.05
7	12.18	12.42	13.41
8	11.93	12.17	13.14
9	12.25	12.50	13.50
10	12.58	12.83	13.85
11	12.89	13.15	14.20
12	13.09	13.35	14.41
13	13.24	13.50	14.58

ST JOHN OF GOD HOSPITAL SUBIACO (HSOA—PHARMACY) AGREEMENT 1996
No. AG 71 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

St John of God Hospital Subiaco Inc

and

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

No. AG 71 of 1997.

21 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT NO. AG 71 OF 1997

HAVING heard Mr I. Oakley on behalf of the first named party and Ms C. Thomas on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, by consent hereby orders:

THAT the agreement titled the St John of God Hospital Subiaco (HSOA—Pharmacy) Agreement 1996, filed in the Commission on 12 March 1997 signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

AGREEMENT

ST JOHN OF GOD HOSPITAL SUBIACO (HSOA—PHARMACY) AGREEMENT 1996

1.—TITLE

This Agreement shall be referred to as the St John of God Hospital Subiaco (HSOA—Pharmacy) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
2A. Introduction
3. Parties to the Agreement
4. Area and Scope
5. Effect of Agreement
6. Term
7. Replacement
8. Definitions
9. Salaries
10. Overtime
11. Flexible Working Hours
12. Family Leave
13. Allowances
14. Dispute Settlement
15. Introduction of Change
16. No Extra Claims
17. Number of Employees
Signatories to Agreement
Schedule A.—Minimum Salaries.

2A.—INTRODUCTION

St John of God Hospital Subiaco Inc. is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Hospital Subiaco Inc. is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Hospital Subiaco Inc. has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

St John of God Hospital Subiaco Inc. will arrange conditions of employment, "Employment Relationships" in accordance with the following "Principles for Employment Relationships."

PRINCIPLES FOR EMPLOYMENT RELATIONSHIPS
BASED ON FIDELITY TO OUR HERITAGE
AUGUST 1993

1. Positive employment relationships are essential for the successful provision of Health Care. Recognition of the rights and duties of the hospital and each Caregiver are required for fairness and mutual accountability. [Justice]*

2. The work of all Caregivers is valued equally in the Mission and operation of the System. (This includes the work of those who provide direct patient care and those whose work enables these hands-on Caregivers to function effectively.) [Respect]*

3. Behaviours in the workplace must demonstrate respect for the basic orientation of the Mission, Philosophy and Cultural Values of the Hospital. [Respect]*

4. In decisions related to clinical provision of health care, the expert knowledge and experienced judgements of health care professionals are acknowledged in their individual areas of competency as we work in collaboration with each other. [Respect, Justice, Excellence]*

5. The hospital recognises the different cultures and faith traditions of our Caregivers. It respects and values these differences and strives to learn from the richness of this diversity. [Hospitality, Respect]*

6. Opportunities for employment, career development and other pathways to growth are open to all people competent for the positions available throughout the hospital. [Hospitality, Compassion, Respect, Justice and Excellence]*

7. The hospital recognises the right of Caregivers to form associations to work for a better society. This does not exclude the Caregiver's right to choose individual negotiations when appropriate. [Respect, Justice]*

8. Decision making, planning and policy formation related to the work of Caregivers will be participative processes involving relevant stake-holders. Due processes are established to attend to grievances, injuries and other concerns. [Hospitality, Compassion, Respect, Justice and Excellence]*

9. Each Caregiver is expected to be committed to person centred care, to continual improvement of the quality of services and to the requirements of the hospital's Mission, Vision and Goals as described in their employment contracts. [Hospitality, Compassion, Respect, Justice and Excellence]*

10. Each Caregiver will be involved in ongoing learning. [Justice, Excellence]*

11. Caregivers are entitled to fair compensation for their work and they will share in the benefits of their work. [Hospitality, Justice, Excellence]*

12. Each Caregiver will contribute to quality patient care and to the common good of all be just and honest performance of the duties of their individual position. [Hospitality, Justice, Excellence]*

(*The Core Cultural Value(s) most relevant to each principle is noted in square brackets [ ].)

CAREGIVER EMPLOYMENT AGREEMENT

Involvement in this Agreement results in mutual commitment to the following—

St John of God Hospital Subiaco Inc.:

1. The provision of fair employment conditions.
2. Maintenance of safe working environments.
3. Opportunities for growth and development for each Caregiver.
4. Resources to facilitate optimum work processes and quality of services.
5. Participation in continual improvement of all work processes.
6. Provision of information and training to enable each Caregiver to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
7. Non requirement of Caregivers to perform duties outside their competence.
8. Provision of a regular cycle of appraisal and review of performance and developmental needs.
9. Involvement of Caregivers as participants in the general functioning of the workplace.

Each Caregiver:

1. Provision of an honest day's work in accordance with the relevant Position Description.
2. Positive participation in the desired organisational culture of the hospital.
3. Involvement in learning that will facilitate personal and professional growth and development.

4. Observance of appropriate safety and security regulations.
5. Observance of the hospital's policies and procedures.
6. Participation in a regular cycle of appraisal and review of performance and developmental needs.

3.—PARTIES TO THE AGREEMENT

The parties to this Agreement shall be St John of God Hospital Subiaco Inc. ("the Hospital") and the Hospital Salaried Officers Association of Western Australia (Union of Workers).

4.—AREA AND SCOPE

This Agreement shall apply to all registered Pharmacists employed as such by St John of God Hospital Subiaco Inc., but shall exclude a Pharmacist employed as a Head of Department, and to the employer employing these employees.

5.—EFFECT OF AGREEMENT

(1) This Agreement shall be read and interpreted in conjunction with the

(a) Hospital Salaried Officers (Private Hospitals) Award, 1980, hereinafter referred to as "the Award", and

(b) the Health Care Industry (Private) Superannuation Award,

but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

6.—TERM

The term of the this Agreement shall be until the 1st March, 1998, from the beginning of the first pay period commencing on or after the date of registration of this Agreement.

7.—REPLACEMENT

(1) Notwithstanding the provisions of Clause 6.—Term, this Agreement shall continue to operate until it is replaced by a new Agreement.

(2) If a new Agreement has not been negotiated within three months after the expiry of the term of this Agreement, and unless all parties agree to extend the negotiating period, the parties agree to have any outstanding issues arbitrated by the Western Australian Industrial Relations Commission or another agreed third party.

(3) Provided that—

(a) the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the Industrial Relations Act 1979.

(b) the parties shall review the Agreement should, as a result of movements in award rates of pay, the total wage prescribed by this agreement for any classification fall below the relevant award safety net. Any such review shall be conducted in accordance with the State Wage Fixing Principles in operation at the time.

8.—DEFINITIONS

(1) "Pharmacist" shall mean an employee who is registered as such under the Pharmacy Act, 1964, and employed as such by the employer.

9.—SALARIES

This clause replaces Schedule B.—Minimum Salaries of the Award.

(1) The employer shall allocate a salary classification level to each position in accordance with Schedule A.- Minimum Salaries of this Agreement and Schedule C.—Classification and Grading of Employees of the Award.

(2) Subject to the provisions of Schedule A.—Minimum Salaries, the minimum annual salaries for employees bound by this Agreement shall be as set out in Schedule A and shall apply from 1 January 1996 until the expiry of this Agreement.

(3) The salary increases agreed to herein absorb and include any award safety net adjustments applying on or after 1st July, 1996 for the duration of this Agreement.

10.—OVERTIME

This sub-clause shall replace sub-clause (2) of Clause 13.—Overtime of the Award.

(1) All time worked at the direction of the employer on a Saturday after 12.00 noon or a Sunday shall be paid for at the rate of double time.

11.—FLEXIBLE WORKING HOURS

(1) General Principles

(a) Whilst flexitime has been designed primarily to enable Pharmacists to have a greater say in planning their working hours, this must be achieved in such a way that satisfactory performance of the Department is maintained.

(b) The organisation of a flexitime schedule shall be the responsibility of the Employees and will cover a period of 10 working days. Flexitime requests must allow for minimum Staffing and other requirements with respect to opening times and lunch break coverage.

(c) The Head of Department retains the right to determine arrangements to suit the operational needs of the Department.

(2) Hours of Duty

(a) The ordinary hours of duty may be an average of 7 hours 36 minutes per day or as per contract which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each two week settlement period shall be 76 hours for full time Employees or as per contract for part time Employees.

(b) For the purpose of leave and public holidays, a day shall be credited as 7 hours 36 minutes or as per contract in the case of part time Employees.

(3) Flexitime Periods

(a) Subject to the operational requirements of the position and the agreement of the Head of Department, a Pharmacist is free to elect his/her hours of duty and times of attendance within the following periods:

07.30 am	-	09.30 am
12.00 pm	-	02.00 pm
04.00 pm	-	06.00 pm

(b) Core Periods

During the core times of 9.30 am to 12.00 pm and 2.00 pm to 4.00 pm, all staff are required to be on duty unless on approved leave.

(c) Lunch Break

An Employee shall be allowed to avail themselves of the meal break between 12.00 pm and 2.00 pm provided that the meal break shall not be less than 30 minutes duration and shall not count as time worked. A lunch break must be taken after a Pharmacist has worked continuously for five hours.

(4) Flexileave

(a) An Employee may be allowed a maximum of one full day or 2 half days (mornings or afternoons) in each settlement period equivalent to 2 core periods.

(b) Approval to take flexileave is subject to the Employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the Manager, flexileave may be taken before accrual subjecto to such conditions as the Manager may impose.

(c) The debit for a full day of flexileave shall be 7 hours 36 minutes or as per contract.

(d) Where a half a day flexileave precedes the day's work, such leave shall be deemed to have commenced at the commencement of prescribed hours of duty.

(5) Settlement Period

(a) For recording time worked, there shall be a settlement period which shall consist of two weeks.

(b) The settlement period shall commence at the beginning of a pay period.

(c) The required hours of duty for a settlement period shall be 76 hours or as per contract.

(6) Credit Hours

(a) Credit hours in excess of the required 76 hours to a maximum of 10 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(b) Credit hours in excess of 10 hours at the end of a settlement period shall be lost except at the discretion of the Manager.

(7) Debit Hours

(a) Debit hours below the required 76 hours to a maximum of 10 hours are permitted at the end of the each settlement period.

(b) Such debit hours shall be carried forward to the next settlement period.

(c) For debit hours in excess of 10 hours, an Employee shal be paid only for the hours worked.

(d) Employee having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(8) Maximum daily working hours

(a) A maximum of 9.5 ordinary hours may be worked in any one day.

(9) Study Leave

(a) Where study leave has been approved by the Employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(10) Compassionate leave and sick leave

(a) Sick leave and compassionate leave will be recorded in hours and minutes and the maximum credit for a full days sick or compassionate leave, is 7 hours 36 minutes or as per contract.

(b) When an employee reports for duty and leaves during the day, the employee will be credited for the time worked and be credited with sick or compassionate leave for the period up to the completion of ordinary hours of duty.

(c) Where an employee takes sick or compassionate leave and subsequently commences work on that day, the employee shall in addition to the credit for hours worked be credited with sick or compassionate leave for the period from the commencement of prescribed hours of duty up to the time of commencing duty.

(11) Public holidays and annual leave

(a) Each public holiday or day of annual leave shall be credited as 7 hours 36 minutes or as per contract.

12.—FAMILY LEAVE

(1) An employee who is unable to attend or remain at work on the grounds of the illness or injury of a family member residing with the employee, is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the employee was rostered to work on that day.

(2) Where an employee is absent in accordance with subclause (1), such absences shall be deducted from the employee's entitlement to sick leave, granted in accordance with Clause 17.—Sick Leave of the Award.

(3) Notwithstanding the provisions of Clause 17.—Sick Leave of the Award, payment for sick leave taken on account of the illness or injury of a family member residing with the employee shall not exceed payment for 38 hours in any one year of service.

(4) Where an employee claims payment for sick leave on account of the illness or injury of a family member residing with the employee, the employee shall be required to provide medical certificates in accordance with sub-clause (4) of Clause 17.—Sick Leave of the Award.

13.—ALLOWANCES.

(1) Where an employee subject to this Agreement is paid an allowance under the Award which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, be calculated using the salary rates as prescribed at Schedule A of this Agreement.

14.—DISPUTE SETTLEMENT

(1) Subject to the provisions of the Industrial Relations Act, 1979 (as amended) any dispute or difficulty, including any matter arising under this Agreement, or any matter raised by the Union, the employer or the employees covered by this Agreement, shall be settled in accordance with the procedures set out herein—

(a) Step 1

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the Department Manager, the employee or employees concerned and where the employee(s) so request(s), the workplace representative.

(b) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the Division Manager, the Department Manager, the employee or employees concerned and where the employee(s) so request(s), the workplace representative who shall attempt to settle the dispute.

(c) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the Manager Employee Relations, the Department Manager, the employee or employees concerned and where the employee(s) so request(s), an official of the union who shall attempt to settle the dispute.

(d) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(2) Throughout all steps of the procedure all relevant facts shall be clearly identified and recorded.

(3) On each occasion sensible time limits shall be agreed upon for the completion of each step of the procedure.

(4) Observance of these procedures shall in no way prejudice the right of any party in dispute to refer the matter for resolution in the Western Australian Industrial Relations Commission, at any time.

15.—INTRODUCTION OF CHANGE

(1) Where an employer has made a definite decision to introduce major changes that are likely to have significant effects on employees, the employer shall notify employees who may be affected, and their Union.

(2) As soon as practicable the employer shall enter into discussions with employees on issues involved in the change.

(3) The employer shall discuss with the Union any matters raised in relation to the changes.

16.—NO EXTRA CLAIMS

There shall be no extra salary claims for the life of this Agreement, except where consistent with decisions of the Western Australian Industrial Relations Commission that reflect State Wage Decisions requiring general application.

17.—NUMBER OF EMPLOYEES

There are an estimated 10 employees covered by the provisions of this Agreement as at the date of registration.

SIGNATORIES TO AGREEMENT

For and on behalf of
ST JOHN OF GOD HOSPITAL SUBIACO:

(signed by R. Baker)
Romy Baker
Chief Executive Officer

In the presence of:
(signed by D. Pantary)

Signed for and on behalf of
HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS):

(signed by D. Hill)
Dan Hill, Secretary.

In the presence of: (*common seal affixed)*
(signed by Corinne Drew)
(signed by M. Hartland)
Mike Hartland, President.
In the presence of:
(signed by Corinne Drew)

SCHEDULE A

MINIMUM SALARIES

(1) The minimum rates of salaries to be paid to employees covered by this award shall be set out hereunder.

(2) Salaries—Specified Callings and Other Professionals

Employeees who are employed in the calling of Pharmacist shall be entitled to AnnualSalaries as follows—

		Salary P/Annum Including 2nd ASNA	Salary Increase Effective from 1/1/96 P/Annum	Salary Increase Effective from 1/7/96 P/Annum
LEVEL				
Level 5/10		27368	28736	30190
		28810	30251	31781
		30606	32136	33762
		32482	34106	35832
		35504	37279	39166
		37523	39399	41393
Level 11/12		39495	41470	43568
		40959	43007	45183
		43039	45191	47478
Level 13/14		44152	46360	48705
		45562	47840	50261
		47023	49374	51872
Level 15		49158	51616	54228
		50908	53453	56158
A	1	53556	56234	59079
	2	55398	58168	61111
	3	57415	60286	63336
	4	60659	63692	66915
	5	63250	66413	69773
	6	65885	69179	72680
	7	69498	72973	76665
	8	71939	75536	79358
	9	74723	78459	82429

(a) Subject to paragraph (c) of this subclause, on appointment or promotion to the Level 5/10 under this clause—

(i) Employees, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment.

(ii) Employees, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.

(iii) Employees, who have completed an approved Masters or PhD Degree, relevant to their calling, shall commence on the third year increment.

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(b) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this Clause and shall maintain a manual setting out such qualifications.

(c) The employer, in allocating levels pursuant to subclause (2) of this clause may determine a commencing salary above level 5/10 for a particular calling/s.

(d) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months.

(e) Any dispute in relation to the payment of an annual increment shall be referred to the W.A. Industrial Relations Commission for determination.

STRAMIT INDUSTRIES, MADDINGTON, WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 70 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stramit Industries

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. AG 70 of 1997.

Stramit Industries, Maddington, Western Australia Enterprise Bargaining Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

8 April 1997.

Order.

HAVING heard Ms J. Dowling on behalf of Stramit Industries Western Australia and Ms C. Smith on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Stramit Industries, Maddington, Western Australia Enterprise Bargaining Agreement 1996 which replaces Industrial Agreement AG 33 of 1994, is registered on the 19th day of March 1997 to operate according to its terms.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Stramit Industries, Maddington, Western Australia Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

This Agreement is arranged as follows:

SUBJECT MATTER	CLAUSE NO.
Title	1
Arrangement	2
Application	3
Parties Bound	4
Date and Period of Operations	5
Relationship to Parent Award	6
Objectives of the Agreement	7
Service Standards	7.1
Competency of Personnel	7.2
Payment of Wages	7.3
Operator Based Maintenance	7.4
Safe Work Practices	7.5
Quality Accreditation	7.6
Customer Service Standards	7.7
Waste Minimisation	7.8
Key Indicators	8
Wages	9
Reclassification/Competency Standards	10
Journey Cover	11
No extra Claims	12
Avoidance of Industrial Disputes	13
Not to be used as a Precedent	14
Agreement Monitoring Procedure	15
Renewal of Agreement	16
Commitment	17
Signatories to this Agreement	18
Appendix	

3.—APPLICATION

a. This Agreement shall apply at Stramit Industries, Malcolm Road and Alloa Street, Maddington—to approximately 45 employees who are bound by the terms of the Metal Trades

(General) Award 1966, No. 13 of 1965, in so far as those provisions relate to the parties referred to in Clause 4—PARTIES BOUND—of this Agreement.

4.—PARTIES BOUND

The parties to this Agreement are:

a. Stramit Industries, Maddington, Western Australia (A division of Amtel Limited)
b. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australia branch.
c. All employees whether members of the organisations of employees name in this clause or not who are engaged in any of the occupations, trades, industries or callings specified in the Metal Trades (General) Award 1966, No. 13 of 1965.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period to commence on or after the 21st May, 1996, and shall remain in force for a period of two years.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted generally in conjunction with the Metal Trades (General) Award 1966, No. 13 of 1965, provided that where there is any inconsistency between this Agreement and the above mentioned Awards, this Agreement, shall take precedence to the extent of the inconsistency.

7.—OBJECTIVES OF THE AGREEMENT

The objectives of this Agreement are to achieve real and positive gains in productivity, efficiency, flexibility and service, as follows:

7.1 SERVICE STANDARDS

To extend our twenty four hour delivery cycle time beyond our Monoclad and Corrugated products in particular rainwater goods to a wider range of customers and product lines.

Actions

a. Implement workload with regard for customer priorities.
b. To ensure workload is completed on time for priority deliveries.
c. To inform the appropriate supervisor as soon as it becomes apparent that production of an order may be delayed.
d. Product quality standards to be closely monitored and maintained in accordance with Australian Standard AS/NZS ISO 9002 : 1994.
e. Damage as a result of poor material handling, inadequate packaging, etc., to be closely monitored and corrective action implemented to eliminate these quality failure incidents.

7.2 FLEXIBILITY AND COMPETENCY OF PERSONNEL

Ensure the continuation of existing and future training plans to achieve total flexibility and competency of personnel across all areas of the operation.

Actions

a. Employees are required to fully participate in the Company's multi-skilling programme to develop a more highly skilled and flexible workforce.
b. Provide employees with appropriate training to acquire additional skills.
c. Experienced employees are required to co-operate and assist with the training of other operators who are developing their skills.
d. Employees and other authorised persons operating overhead cranes and forklift trucks are required to achieve the Company's Certificate of Competency before using this equipment. See Appendices a and b.
e. In carrying out duties, employees will take all necessary steps to ensure that the quality, accuracy and completion of any job or task are maintained to the required standards.

7.3 PAYMENT OF WAGES

Wages are to be paid by Electronic Fund Transfer (EFT) for all employees engaged by Stramit Industries.

7.4 OPERATOR BASED MAINTENANCE

Actions

a. Operators are required to carry out the daily maintenance schedule as specified in the Quality Assurance Operating Manuals.
b. Where necessary the Company will provide appropriate training for this work to be carried out.
c. Operators are required to report equipment malfunctions to their supervisor as soon as possible.

7.5 SAFE WORK PRACTICES

To minimise lost time accidents and injuries through adherence and review of safe working practices, procedures and programmes.

Actions

a. The parties are committed to the elimination of all incidents which could result in personal injury, occupational illness or damage to Company property and the environment of injury or damage to a customer or supplier.
b. All employees have an obligation as defined under the Western Australia Occupational Safety and Health Act 1984 (Occupational Safety and Health Regulations 1st July, 1996) to participate in the maintenance of a safe working environment.
c. The Company operates a Safety Committee with an elected representative from each of the main work areas.
d. Delegate so elected must regularly attend Safety Committee Meetings. If absence is unavoidable then the Company's Safety Officer must be informed and a deputy provided.
e. It is strictly against the rules and a dismissible offence of this workplace to interfere with, or make inoperative, any safety equipment or guards.
f. All work-related injuries must be reported to the appropriate supervisor/manager and noted by the same. Failure to report accidents may jeopardise payment of workers compensation should this subsequently be claimed.
g. Any damage to plant or equipment should be reported to the appropriate supervisor/manager as soon as possible.

7.6 QUALITY ACCREDITATION

The commitment and active participation of all employees in quality assurance procedures and methods required to maintain AS/NZS ISO 9002: 1994 accreditation.

7.7 CUSTOMER SERVICE STANDARDS

The Company has a commitment from all its employees to achieve and maintain levels of excellence in customer service and is re-affirmed with the specific objectives:

: reduce production and distribution related complaints
: reduce late orders and back orders

Action

a. The Company is reviewing its Customer Awareness Programme with a view to improving Stramit's customer service and image.
b. Employees having direct customer contact are required to present themselves in a neat and tidy manner which includes the wearing of Company provided clothing.
c. Such employees are required to conduct themselves in a helpful and courteous manner.

7.8 WASTE MINIMISATION

In order to achieve the effective and efficient utilisation of raw materials and management of finished goods the recording and observance of waste removal and management procedures will apply together with appropriate housekeeping practices. It is anticipated this will achieve a reduction in scrap and an overall reduction in coil change times on a machine by machine basis.

Actions

a. Strict adherence to procedures as set out in AS/NZS ISO 9002 : 1994 will improve material utilisation and avoid the production of a sub-standard product.

b. Part coils must be treated with care and stored in positions to avoid damage.

c. Finished product must not be walked over or receive other rough handling which could result in damage.

d. Off cuts are to be run to a sized designated by the supervisor so that they are saleable.

e. Faulty material from the supplier must be reported to the Purchasing Officer to initiate the reclaim procedure.

f. Material returns from customers are to be handled in accordance with the AS/NZS ISO 9002 : 1994 procedure and held in the quarantine area for reprocessing and sale.

g. Faulty product to be transferred to "sub-standard" area for secondary utilisation or sale.

8.—KEY INDICATORS

In order to achieve and maintain a continuous improvement environment the following key indicators will be monitored and specific objectives measured throughout the life of this Agreement.

The key indicators are:

a. Further equipment utilisation gains to be the achieved by implementing new processes and work methods developed both by the Company and within the Consultative Committee with the aim of achieving the Company objective of 75**%** utilisation.

b. Coil change time reductions by machine and process. Objective is to achieve 10 minutes coil change times or better.

c. Reduce delivery cycle time to achieve next day delivery in all stock products and up to 25**%** of Monoclad/Corrugated.

d. Reduce production related complaints to 20 per month as recorded, via the Customer Service / Quality Incident Report.

e. Scrap as a percentage of raw material inputs. The objective is to achieve at Malcolm Road a 1.5**%** and at Alloa Street a 3.0**%** average or less scrap level throughout the life of this agreement.

f. Improve safety performance—lost time accidents are to be recorded and investigated together with adherence to safe working practices and maintenance of good housekeeping standards. Target 0**%** lost time injuries.

g. Maintain AS/NZS ISO 9002 : 1994 accreditation.

h. Minimise loss of productive hours due to non attendance. Target of no more than **2%** of total ordinary hours worked.

9.—WAGES

a. Metal Trades (General) Award 1966, No. 13 of 1965,

Part 1—General

Wage Group	Classification Table	Col.1	Col.2	Col.3
		20.05.96	21.05.96	19.05.97
Level C14	Engineering Production Employee Level I	409.50	425.88	442.92
Level C13A	Engineering Production Employee Level II	420.00	436.80	454.30
Level C13B	Engineering Production Employee Level II	430.00	447.20	465.09
Level C13C	Engineering Production Employee Level II	440.00	457.60	475.90
Level C13D	Engineering Production Employee Level II	450.00	468.00	486.72

b. The wage increase in sub clause (a) hereof shall be payable subject to achieving the agreed indicators as follows:

i. The amount shown in Column 2 shall be payable from the beginning of the first pay period after the 21st May, 1996.

ii. The amount shown in Column 3 shall be payable from the beginning of the first pay period after the 19th May, 1997.

10.—RECLASSIFICATION / COMPETENCY STANDARDS

The parties agree that employees have access to reclassification and career path progression for skills utilised.

11.—JOURNEY COVER

Stramit Industries undertrakes to provide Journey Cover for its employees with the benefits being in accordance with the Western Australian Workers Compensation Legislation for the life of this Agreement.

12.—NO EXTRA CLAIMS

The parties to this Agreement undertake that during the period of operation of this Agreement, there shall be no further wage increase sought, or granted, except for those provided under the terms of this Agreement.

13.—AVOIDANCE OF INDUSTRIAL DISPUTE EMPLOYEE GRIEVANCE PROCEDURE

a. The disputes settlement procedure provided for in the Metal Trades (General) Award 1996, No. 13 of 1965, shall apply to any matter in dispute between the Company, employees and the Union.

14.—NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

15.—AGREEMENT MONITORING PROCEDURE

This Agreement shall be subject to continuous monitoring and review periods of no longer than one (1) month to ensure that expected performance improvement actually occurs. In particular, adverse movements in the productive performance measures will be a primary trigger for the review procedure.

Accordingly, in the event that performance fails to match expectations, or subsequently deteriorates, corrective action will be taken without delay.

16.—RENEWAL OF AGREEMENT

Discussions will take place three months prior to the expiry of this Agreement to discuss the nature of changes, if any, to the Agreement.

17.—COMMITMENT

This Agreement commits every employee of Stramit Industries, Maddington, Western Australia, Management and the Union to exercise the necessary flexibility and broadness of approach to allow the measures and objectives outlined in the Agreement to be achieved.

18.—SIGNATORIES TO THIS AGREEMENT

Signed

ELTON W. BROWN
State Manager W.A.
Stramit Industries
Western Australia

Dated this 28th day of February, 1997

Signed

JOHN SHARP-COLLETT

Common Seal

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

Dated this 27th day of February, 1997

APPENDIX

a. Certificate of Competence—Overhead Electric Cranes

b. Certificate of Competence—Fork Lift Trucks

TOWN OF KWINANA (WA) ENTERPRISE AGREEMENT 1996
No. AG 88 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Town of Kwinana

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. AG 88 of 1997.

Town of Kwinana (WA) Enterprise Agreement 1996 (From Dreamtime to Excellence).

28 April 1997.

Order.

HAVING heard Ms A.J. Richards as counsel on behalf of the Applicant and Mr G.C. Sturman as agent 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 2nd day of April, 1997 entitled Town of Kwinana (WA) Enterprise Agreement 1996, be registered as an industrial agreement.

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

———

Schedule.

1.0—TITLE

This Agreement shall be known as the "Town of Kwinana (WA) Enterprise Agreement, 1996" (From Dreamtime to Excellence) ("the Agreement")

2.0—ARRANGEMENT

This Agreement is arranged as follows:

1. TITLE
2. ARRANGEMENT
3. APPLICATION
4. PARTIES TO THE AGREEMENT
5. DATE OF OPERATION—REVIEW AND RENEWAL
6. RELATIONSHIP TO AWARDS
7. CONSULTATIVE COMMITTEE
8. SHARED VISION FOR THE TOWN OF KWINANA
9. COMMUNICATION OF AGREEMENT
10. OBJECTIVES OF AGREEMENT
11. INTENT
12. WORKPLACE ORGANISATION
    - 12.1 PEAK STEERING TEAM
    - 12.2 IMPLEMENTING RESTRUCTURE
13. PRODUCTIVITY INITIATIVES
    - 13.1 WORK ORGANISATION
    - 13.2 QUALITY ASSURANCE
    - 13.3 KEY PERFORMANCE INDICATORS
    - 13.4 BENCHMARKING
    - 13.5 AUTONOMOUS WORK TEAMS
    - 13.6 PAID TIME OFF INITIATIVE
    - 13.7 ANNUALISED HOURS/SALARIES
    - 13.8 ONE AWARD/COMMON CONDITIONS
14. INITIATIVES TO SUPPORT THE INTRODUCTION OF CHANGE
    - 14.1 ETHICS
    - 14.2 WORKPLACE CHANGE
    - 14.3 DISPUTE RESOLUTION PROCESS
    - 14.4 CONTINUITY OF CUSTOMER SERVICE
    - 14.5 EMPLOYMENT SECURITY
    - 14.6 EQUAL EMPLOYMENT OPPORTUNITY
    - 14.7 TRAINING
    - 14.8 OCCUPATIONAL SAFETY & HEALTH
    - 14.9 EMPLOYEE RESPONSIBILITY & ACCOUNTABILITY
    - 14.10 REDUNDANCY REDEPLOYMENT AND RETRAINING POLICY
    - 14.11 REDUNDANCY PROVISIONS
    - 14.12 COMPETITIVE TENDERING AND CONTRACTING OUT
    - 14.13 EMPLOYEE ASSISTANCE
    - 14.14 FAMILY RESPONSIBILITIES
    - 14.15 REMUNERATION PACKAGING
15. FEDERAL AND STATE WAGE PRINCIPLES
16. OTHER PARTIES
17. TIMETABLE FOR PAYMENT
18. EXECUTION OF AGREEMENT

ANNEXURE A—SCHEDULE OF RATES

3.0—APPLICATION

This Agreement shall apply to the Mechanical Maintenance Section which covers an estimated two (2) employees.

4.0—PARTIES TO THE AGREEMENT

The Parties to this Agreement are:

a) The Council of the Town of Kwinana

b) The employees covered by the Metal Trades (General) Award, No 13 of 1965.

c) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch ("the AMWU")

("the Parties")

5.0—DATE AND OPERATION OF AGREEMENT—REVIEW AND RENEWAL

5.1 The Agreement shall operate from 10 October 1996 until 9 October 1998 ("the Term").

5.2 The Parties will commence negotiating a new agreement six (6) months prior to the expiration of the Term of this Agreement.

5.3 An increase in the base rate of pay of an employee achieved as a result of this Agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement.

5.4 The intent of the Parties is to enter into a long term agreement to enable the effective implementation of initiatives which will increase productivity and improve the conditions of employees. If this Agreement is working well it is intended that a new Agreement will be entered into for a further two years on similar terms.

5.5 The Agreement shall continue to apply after the expiration of the Term provided that the Parties are negotiating in good faith to reach agreement in relation to a new enterprise bargaining agreement. If the Parties are not negotiating in good faith, this Agreement will lapse and the conditions of the Awards as at that point in time will apply to all employees.

5.6 If the Parties are not negotiating in good faith as set out in Clause 5.5, then any of the Parties to the Agreement may give the Commission written notice stating that that Partner does not want to remain bound by the Agreement and the other relevant Parties shall consent to that Partner's withdrawal from the Agreement.

6.0—RELATIONSHIP TO AWARDS

6.1 The 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 the terms of this Agreement shall apply to the extent of any such inconsistency.

6.2 The Agreement shall be read and interpreted wholly in conjunction with the Awards set out in this clause as they stand at the registration of this Agreement. Should there be any inconsistency between this Agreement on the one hand and the Awards on the other, this Agreement will prevail to the extent of the inconsistency. Subject to clause 5.5 and 5.6, this clause shall be operative until a new agreement is negotiated or for a period of thirty six (36) months, whichever is the earlier.

7.0—CONSULTATIVE COMMITTEE

7.1 The Parties covered by this Agreement have formed a Consultative Committee and through negotiations have reached agreement on the terms of this Agreement.

7.2 This Agreement has been presented to employees at the Town of Kwinana who have endorsed it.

7.3 The Consultative Committee has operated according to the principles set out in it's Charter, the terms of which are set out below:

The Committee members agree to—

- arrive at meetings on time
- be honest in all dealings
- develop mutual trust
- respect the opinion of others
- work towards one common goal
- work as a team
- represent the views of all staff and not personal views
- listen to what all members have to say
- be consistent
- respect that members belong to different unions
- represent consensus views of the Consultative Committee
- come to meetings with an open mind and focus on the future
- allow all members to express their viewpoint
- set targets and focus on objectives and outcomes
- take into account commercial realities when making suggestions or discussing issues
- call on experts if needed

8.0—SHARED VISION FOR THE TOWN OF KWINANA

8.1 The Parties to this Agreement are committed in striving to achieve the Town of Kwinana's vision which is:

"KWINANA THE PROUD HAPPY PLACE WHERE ALL PEOPLE LIVE TOGETHER IN A TOLERANT WAY IN A MIXTURE OF CULTURES AND LIFESTYLES, LOOKING FORWARD TO A WELL PLANNED FUTURE".

8.2 The Town of Kwinana's mission statement is:

"TO PROVIDE AN OPEN, CAPABLE, ACCOUNTABLE AND VISIONARY ORGANISATION ENSURING THE COMMUNITY THE BEST QUALITY OF LIFE THROUGH FACILITATING THE PROVISION OF SERVICES".

9.0—COMMUNICATION OF AGREEMENT

In order to achieve this Agreement employees of the Town of Kwinana have been involved in the process through:

- learning programs
- awareness sessions
- consultative meetings
- briefings
- dissemination of information

Feedback was encouraged to give employees input and ownership in the process.

This resulted in employees voting in support of the Agreement.

10.0—OBJECTIVES OF AGREEMENT

All Parties are committed to improving performance at the Town of Kwinana where sustainable productivity improvements will make it a leader in Local Government. This Agreement is the catalyst for improvements through the concepts of continuous improvement, autonomous work teams and employee empowerment. The objectives of this Agreement are as follows:

10.1 Provide a high quality of work life for all employees.

10.2 Develop an organisational culture that encourages and embraces the concept of continuous learning.

10.3 Create the concept of "one workforce—one team".

10.4 Develop an organisation where everyone would like to work.

10.5 Encourage employees to be innovative in a consultative and participative environment.

10.6 Introduce initiatives, which may in the short term incur costs, in order to increase the productivity, efficiency and effectiveness of the Council and have positive cost implications in the long term.

10.7 Improve the organisation's customer focus.

10.8 Increase the productivity, efficiency and effectiveness of the organisation.

11.0—INTENT

This Agreement is designed to enable the Parties to work together in a co-operative manner, in an environment of honesty and mutual respect, to achieve the highest possible work performance. The Parties recognise that continued and enhanced employment opportunities can only be achieved by a process of continuously improving the quality, efficiency, safety, technology and productivity of work.

The Parties are committed to a continuing process of identifying activities which could be performed on a more cost effective basis. This includes taking a positive and proactive approach to overcoming inefficiencies resulting from traditional philosophies, agreements and practices.

12.0—WORKPLACE ORGANISATION

12.1 PEAK STEERING TEAM

12.1.1 Formation of the Peak Steering Team

A key initiative for maximising employee ownership through involvement and genuine interaction is the formation of a Peak Steering Team within one (1) month of the registration of the Agreement. The purpose of the Peak Steering Team is to provide support and positive leadership to employees at the Town of Kwinana and to meet the objectives set out in subclause 12.1.2.

12.1.2 Implementation of Initiatives

The responsibility of making decisions lies within all employees, therefore the Peak Steering Team will guide the implementation of initiatives by meeting the following objectives:

- to develop and maintain the charter and meeting procedure by which the Peak Steering Team operates
- to communicate progress and status of initiatives
- to give employees ownership of the workplace by allowing them to make decisions affecting their work practices, subject to appropriate limitations and the acceptance of responsibility and accountability
- to discuss any issues related to organisational change
- to oversee the successful development, implementation and monitoring of Key Performance Indicators
- to monitor the implementation of the Agreement
- to develop trust and teamwork within the Town of Kwinana
- to create an environment where everyone is treated in a fair and equitable manner
- to work at creating a workplace where everyone would like to work
- to develop and implement a code of ethics as referred to in Clause 14.1 of this Agreement.
- to develop a strategy to monitor the implementation of the organisational re-structure and evaluate it's effectiveness.

12.1.3 Council Commitment

The Peak Steering Team and the Council or it's representatives will meet on a quarterly basis to discuss progress of the implementation of initiatives contained within the Agreement. Strategic issues which may impact on the future direction of the Town of Kwinana will be discussed and communicated with employees.

12.1.4 Frequency and Timing of Meetings

Meetings will take place on a monthly basis at a time to be determined by the Peak Steering Team.

12.1.5 Composition of the Peak Steering Team

a) The Peak Steering Team will comprise elected representatives covered by each of the following award or group of awards. Each representative shall be elected by the employees under the relevant awards for a period of twelve (12) months:
   - Local Government Officers' (Western Australia) Award 1988 (two representatives)
   - Municipal Employees' (Western Australia) Award, 1988 (one representative)

- Child Care (Subsidised Centres) Award (one representative)
- Metal Trades (General) Award, No 13 of 1965

A proxy should be elected to attend in the absence of one of the representatives.

b) The Town of Kwinana will have a total of four (4) representatives (including the Chief Executive Officer) or in their absence a proxy.

c) Each of the Union Parties will also be members of the Peak Steering Team

d) Chairperson

The Peak Steering Team will select a Chairperson from it's membership. The position of Chairperson will be rotated on a six (6) monthly basis. The Chairperson is responsible for orderly conduct of meetings and ensuring an open and balanced discussion at all meetings.

e) Administrative Support

The Town of Kwinana will provide an Administrative Officer to provide support to the Peak Steering Team. The Administrative Officer is responsible for convening of meetings, written notification to members, distribution of agenda and minutes, recording of minutes and follow up to action items.

f) Decision Making Process

All decisions of the Peak Steering Team shall be made by consensus.

12.2 IMPLEMENTING RESTRUCTURE

The Parties are committed to the implementation of the organisational restructure as discussed with the Consultative Committee.

13.0—PRODUCTIVITY INITIATIVES

13.1 WORK ORGANISATION

The Parties to this Agreement are committed to improving the organisation and work through the development of a more dynamic and responsive empowered organisation.

13.1.1 Demarcation

The introduction of new technologies, the empowerment of employees, the move towards Autonomous Work Groups/ Teams and continuous workplace improvement will result in work being organised on a whole of job approach. This may necessitate changes to some existing work practices and the removal of current restrictions, restraints and barriers.

Every endeavour will be made to resolve demarcations at the workplace through consultation with employees and their union representatives.

13.1.2 Cross Skilling

The Parties are committed to the concept of cross skilling where there may be significant benefits to both the employee and the employer. Cross skilling will lead to a reduction in both casual and temporary staff numbers and a higher level of customer service which will have a positive impact on the performance of the organisation. Cross skilling will also provide increased job satisfaction and alternative career pathing for employees. The Parties agree to explore the concept of an understudy scheme.

13.1.3 Rostered Day off

The Parties are committed to exploring the opportunity of re-organising the Rostered Day system to improve work coverage through better planning, re-organising and or scheduling of Rostered Days.

This will only occur through extensive consultation and with the agreement of all Parties.

13.1.4 Allowances

The Parties agree to explore the opportunity of simplifying the payment of allowances.

13.1.5 Hours of Work

(a) The intent of this sub-clause is to:

- give employees the opportunity of working more flexible hours to take into account factors such as family responsibility, and
- enable the organisation to provide a higher level of customer service.

(b) Ordinary hours for other employees shall average 38 hours per week over a four week period, Monday to Friday and are to be worked between 0600 hours and 1800 hours as required (excludes shift employees) to a maximum of ten hours per day.

(c) Employees may be given the opportunity to work ordinary hours outside the hours set out in paragraph (c) of this sub-clause at base rates without overtime penalties by written agreement between the employer, employee and the relevant Union Partner.

(d) Neither the employer or an employee can be forced to reach any agreement pursuant to paragraph (f) of this sub-clause.

(e) The Parties agree that an arrangement pursuant to paragraph (f) of this sub-clause shall not create a precedent binding on the Parties nor shall it be a condition precedent to gaining employment for any person.

13.1.6 Relief Staff

The Parties agree to review the use of relief staff with the intention of reducing the associated cost. The levels of customer service provided should be taken into consideration during the review process.

13.2 QUALITY ASSURANCE

The Parties are committed to ensuring that procedures, policies and processes are implemented to meet the standards required in order to achieve Accreditation to a nationally recognised Quality Standard.

MILESTONE 1

M1a *Developing a Quality manual and supporting procedures within twelve (12) months of registration of the Agreement.*

M1b *The workplaces covered by this Agreement being accredited as quality assured to ISO9002 or other equivalent standard.*

13.3 KEY PERFORMANCE INDICATORS

13.3.1 The Parties agree Key Performance Indicators ("KPI's") will be identified, monitored and evaluated by Teams with the main focus being on improving performance through measurement and learning.

13.3.2 The Peak Steering Team will oversee the establishment and implementation of Key Performance Indicators within areas covered by this Agreement.

13.3.3 Appropriate training will be provided to Teams and facilitators. The Parties are committed to supporting this process by providing necessary resources.

(Note: This process will not be used to check or monitor individual performance.)

MILESTONE 2

M2a *Within nine (9) months of registering the Agreement, teams and team members will have received training in the implementation of key performance indicators.*

M2b *Within twelve (12) months of registration of the Agreement, teams will have developed key performance indicators and be actively monitoring and evaluating the results.*

13.4 BENCHMARKING

The Parties are committed to benchmarking processes and practices within the Town of Kwinana. Benchmarking is an ongoing, systematic process to search for and introduce best practice to the Council. The search may be of products, services or business practices and processes of competitors or those organisations whether local, national or international are recognised as leaders in the industry or specific business processes which have been chosen. It is imperative this process be seen to be one where opportunities may be found through not just comparing services but also improving them. Benchmarking is another catalyst which may remove complacency in organisations in the quest to strive towards Best Practice.

The intention will be to benchmark comparable groups, sections or organisations. There will be an analysis of costs included in the process rather than just focussing on the bottom line.

The Peak Steering Team will monitor the benchmarking process and promote it throughout the organisation.

13.5 AUTONOMOUS WORK TEAMS

13.5.1 An Autonomous Work Team is a group of employees who:

- share the responsibility for a particular unit of production;
- are responsible for a "whole" work process or segment that delivers a product or service to an internal or external customer.
- work together to improve their operations, handle day-to-day problems, and plan and control their work, managing many of the things supervision or management used to do.

13.5.2 The Parties will promote the concept of Autonomous Work Teams by allowing employees more scope in decision making and encouraging involvement in planning the way work is carried out.

13.5.3 The Parties see the following benefits of teams. Teams:

- develop a broader range of tasks and skills
- provide greater flexibility and adaptability
- require less supervision
- are able to respond to technological change more quickly
- act as a catalyst for the introduction of and acceptance of cultural change
- attract and retain the best people (employee retention rates increase)
- improve the work flow and overall performance of the organisation
- enable the development of leadership and interpersonal skills

13.5.4 Team Strategy

The Peak Steering Team will develop an agreed strategy and plan on the development of Teams at the Town of Kwinana in which the processes, roles and responsibilities will be outlined. The strategy will address competencies and training required and ascertain appropriate levels of delegation.

MILESTONE 3

M3a *Within six (6) months of registration of the Agreement the Peak Steering Team will support the development of an agreed strategy and plan for the development of teams and employees provided with awareness training on team composition and performance.*

M3b *Within twelve (12) months of registration of the Agreement, work teams will be established and boundaries and outcomes, responsibilities and operational budgets/resources defined.*

13.6 PAID TIME OFF INITIATIVE

The Parties are committed to exploring the opportunity of introducing a paid-time off initiative.

13.7 ANNUALISED HOURS/SALARIES

The Parties may agree to an alternative method of payment involving annualised hours/salaries whereby employees are paid a fixed fortnightly amount which will be independent of actual hours worked. Each work team should be reviewed individually to determine whether such an initiative would be mutually beneficial to all the parties involved. Any implementation of annualised hours/salaries will be subject to full consultation and agreement of the Parties.

MILESTONE 4

M4 *Within eighteen (18) months of registration of the Agreement the concept of annualised hours will be explored and proposals will be fed back to the Peak Steering Team for their consideration.*

13.8 ONE AWARD/COMMON CONDITIONS

The Parties agree that during the life of this Agreement, they will research, consider and review the possibility of moving towards one award or common conditions which reflects the nature of Local Government and particularly the environment in which the Council operates.

MILESTONE 5

M5 *Within eighteen (18) months of the registration of this Agreement the Parties will research, consider and review the possibility of moving towards one award or common conditions. If all Parties to this Agreement conclude that one award or common conditions would be mutually beneficial then a document with common conditions will be prepared for consideration at the next round of bargaining.*

14.0—INITIATIVES TO SUPPORT THE INTRODUCTION OF CHANGE

14.1 ETHICS

The Parties support and encourage an ethical environment that encourages positive behaviours based on the following ethical principles:

(i) The well being of employees is to be promoted.
(ii) Partner's are to be treated fairly and not discriminated against.
(iii) Partner's rights and dignity should be respected.
(iv) Parties will be honest in all dealings.
(v) The Parties agree to treat sensitive information in relation to customer service and personnel with discretion.
(vi) The Parties agree to respect Council's intellectual property.
(vii) Conflicts of interest are to be declared by employees.
(viii) Information, resources or equipment are to be used in their intended manner by employees.

MILESTONE 6

M6 *The Parties agree to support the development and implementation by the Peak Steering Team of a Code of Ethics for the Town of Kwinana within twelve (12) months of the date of registration of this Agreement. The code will be developed with full consultation of all employees.*

14.2 WORKPLACE CHANGE

Any move to alter how work is arranged must support the organisation's vision. The focus must be on satisfying and exceeding our customer's requirements by providing an efficient and effective service.

The Town of Kwinana has different types of business, therefore workplace specific arrangements will need to be developed which complement the business of a particular workplace.

An integral part of the workplace change process will be to offer more empowerment to employees and teams so that effective decisions may be made. Employees will be given ownership which will lead to improvements in productivity and in the level of service to customers.

The Parties to this Agreement accept that technological change can be discussed during the life of this agreement. The objectives of technological change are to provide for:

- flexible work arrangements
- work from home
- rehabilitation of employees for improved productivity

Consultation is another form of negotiating. It is an on-going two way process focussing on the future rather than reacting to problems when they arise. It is about sharing the responsibilities for the workplace with everyone, and involving employees in job design and work organisation.

Consultation may lead to:

- achieving changes that will lead to improved efficiency and productivity
- improved communications and industrial relations in the workplace
- a better response to workplace reform
- an acceptance of on-going change in the workplace

The Parties acknowledge these initiatives may result in fundamental changes to how the work and workforce is organised.

This process will be done with full consultation with all the Parties.

14.3 DISPUTE RESOLUTION PROCESS

Any questions, difficulties or disputes ("the Issue") requiring resolution shall be dealt with in the following manner:

14.3.1 The Issue will be raised and discussed between the parties immediately involved. An attempt will be made to resolve the issue.

14.3.2 If the Issue is not resolved within three (3) working days, or where not practicable any other reasonable time frame agreed between the Parties, the issue can be referred to:

(a) in the case of the Town of Kwinana, a more senior manager

or

(b) in the case of the employee or group of employees the shop steward or other representative nominated by the employee(s).

Those parties will attempt to then resolve the issue.

14.3.3 If the Issue still remains unresolved within three (3) working days of being referred to the parties set out in clause 14.3.2 the issue can be referred:

(a) in the case of the Town of Kwinana to the Chief Executive Officer

and

(b) in the case of an employee or group of employees to the relevant union official or other person nominated by the employee(s).

These parties shall then attempt to resolve the matter within five (5) working days of the issue being referred to them.

14.3.4 If the Issue is referred to a union official pursuant to subclause 14.3.3 of this clause the employee, or group of employees or shop steward will notify the State Secretary of the relevant union so that he/she may have the opportunity of discussing the issue with the Chief Executive Officer if he/she chooses to.

14.3.5 Subject to clause 14.4.1, while the above process is being pursued work shall continue as normal.

14.3.6 If the Issue still remains unresolved after five (5) working days as set out in clause 14.3.4 the issue may be referred to the appropriate Industrial Relations Commission for conciliation and for arbitration within due process.

14.3.7 Where a time frame has been stipulated in this clause the parties agree to take into account constraints outside the control of the parties involved.

14.3.8 Issues of poor performance of an individual employee will not be dealt with in the manner set out in this clause. Such concerns should be addressed through the Performance Development Review system.

14.3.9 This clause is only intended to deal with Issues arising pursuant to the interpretation, operation and application of this Agreement.

14.4 CONTINUITY OF CUSTOMER SERVICE

14.4.1 The Parties are committed to providing service on a continuous basis to all customers.

Subject to subclause 14.4.2, if a dispute arises pursuant to this Agreement the Parties agree:

- to resolve the dispute by following the process set out in clause 14.3
- to continue to provide a full range of services and not to disrupt the provision of services in anyway unless seventy two (72) hours notice in writing is given of the impending dispute.

14.4.2 The Parties further recognise the common law right of all working individuals to cease work where their health and safety is being jeopardised and agree that the procedures for resolution as provided in Section 24 and 26 of the Occupational Safety and Health Act 1984 will be followed.

14.5 EMPLOYMENT SECURITY

14.5.1 The Parties recognise there may be fundamental changes in the way work is organised which will result in improvements in productivity and service to the customer. In recognition of these changes there will be no forced redundancies for the duration of this Agreement.

14.5.2 The Council is committed to providing employment security to its employees, but also believes employment security lies within each employee in the value they add to the organisation.

14.6 EQUAL EMPLOYMENT OPPORTUNITY

The Parties to this Agreement agree to practice and promote the principles of equal employment opportunity and are committed to the spirit and principles of equal employment opportunity legislation.

14.7 TRAINING

The Parties to this Agreement recognise that in order to increase the efficiency and productivity at the Town of Kwinana a commitment to training and skill development is required. Accordingly, the Parties commit themselves to:

- conducting a training needs analysis
- developing a highly skilled and flexible workforce
- providing employees career opportunities
- providing opportunities for better paid and more satisfying jobs
- removing barriers to the utilisation of skills acquired
- supporting employees participating in cross skilling and multi skilling

MILESTONE 7

M7 *With fifteen (15) months of registration of the Agreement a training needs analysis and a program of relevant training will be developed for the Town of Kwinana employees.*

14.8 OCCUPATIONAL SAFETY AND HEALTH

A safe working environment will impact positively on morale and ultimately on the organisation's performance.

The Parties recognise the legislative requirements as set out in the Occupational Safety and Health Act 1984 and Regulations.

The Parties are committed to ensuring the provision of a healthy and safe work environment for all employees and to promoting the wellbeing of all employees.

14.9 EMPLOYEE RESPONSIBILITY AND ACCOUNTABILITY

With the move towards more employee empowerment and employee ownership there is recognition by all Parties that delegation of responsibility and accountability must be complementary. Before responsibility is delegated to an employee that employee will receive adequate training and resources. If an employee accepts responsibility that employee will be held accountable. This is seen as crucial to the cultural shift being pursued by the Town of Kwinana.

The Peak Steering Team will assist in a monitoring, coordinating and supporting role with the allocation and delegation of responsibility and accountability against processes, tasks and functions to achieve continuous improvement.

14.10 REDUNDANCY, REDEPLOYMENT AND RETRAINING POLICY

The Parties agree to develop a comprehensive Policy on redundancy, redeployment and retraining which reflects the value of the employee to the organisation. The intent of redeployment is to find an alternative position which maintains the employee's self worth and requires at least a similar level of skills to the employees original position. If the employee's skills, knowledge and experience require further development the Parties are committed to providing the necessary opportunities, resources and training.

MILESTONE 8

M8 *The Parties agree to develop a policy within six (6) months of the registration of the Agreement on redundancy, redeployment and retraining.*

14.11 REDUNDANCY PROVISIONS

14.11.1 The Parties agree that there will be no forced redundancies during the Term of the Agreement. However, if:

(a) an employee's position is made redundant;

(b) there are no suitable redeployment positions and

(c) the employer and employee both agree

then the employee will be offered the provisions set out in Clause 14.11.2.

14.11.2 In the case where an employee's position is made redundant and that employee is offered a redundancy the following provisions will apply:

a) Four (4) weeks notice or pay in lieu of notice;

b) An additional one (1) week's notice or pay in lieu of notice if the employee is over 45 years of age; and

c) Two and a half (2 1/2) weeks pay for every completed year of service up to fifty two (52) weeks.

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

14.11.3 In the case where an employee's position is made redundant and that employee is redeployed to an alternative position with a lower classification then the employee's classification and conditions will be preserved for twenty four (24) months from the date of redeployment. In the case where a specialist vehicle was provided as a condition of employment and was required to carry out the original position, the employer reserves the right to provide a normal fleet vehicle in lieu of the specialist vehicle if that specialist vehicle is not required to carry out the duties of the new position. This clause is to apply provided that the employee is willing to utilise the full range of skills required at that level and participate fully in any retraining or redeployment programs.

14.12 COMPETITIVE TENDERING AND CONTRACTING OUT

The Town of Kwinana is seeking to move towards a more commercial style of operation which recognises the nature of the business in which it is engaged and the significant role that earned income plays in its overall financial situation. The Town of Kwinana believes that the changes in structure and organisation required to facilitate change to a more commercial operation will benefit the organisation and assist employees to provide their services to the public.

Every endeavour will be made to improve the performance at the Town of Kwinana relative to "Best Practice" benchmarks.

The Parties will work towards determining the most effective and efficient means of using internal and external resources, with proper regard to the needs, security, training and development and long term efficiency of employees within the Town of Kwinana.

The Parties agree that arbitrary job reductions are not a sound basis upon which improvements to productivity are secured. The Town of Kwinana agrees that any proposed changes to the permanent workforce will be done in full consultation with the Parties. The Parties agree that the Peak Steering Team will be the forum to discuss and consult on all matters affecting the workforce such as contracting out.

14.13 EMPLOYEE ASSISTANCE

The Parties are committed to ensuring that appropriate and confidential assistance is readily available to all employees regardless of the cause or type of problem.

14.14 FAMILY RESPONSIBILITIES

The Parties are committed to exploring the opportunity of developing a policy dealing with Family Responsibilities.

MILESTONE 9

M9 The Parties agree to develop a policy within twelve months of the registration of this agreement.

14.15 REMUNERATION PACKAGING

The Parties are committed to exploring the opportunity of developing a policy which deals with different options for remuneration packaging such as salary sacrificing.

15.—FEDERAL AND STATE WAGE PRINCIPLES

15.1 Other than the increases referred to in subclause 16.2 there shall be no further wage increases for the Term except as set out within the Agreement.

15.2 If any wage increases are awarded as a result of a National or State Wage Case decision those increases will be absorbed by the increases within this Agreement. (For example, if $5.00 was payable pursuant to the entire Agreement and $11.00 was awarded as a result of a National Wage Case decision then $5.00 would be absorbed and only an additional $6.00 would be payable. If an amount awarded by a National Wage Case decision is less than the amount payable pursuant to the entire Agreement no additional payment will be made.)

15.3 No provisions in this Agreement shall operate to cause any employee a reduction in ordinary time earnings or to cause a departure from the standards of the Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

16.—OTHER PARTIES

The Parties to this Agreement shall oppose any applications by other parties to be joined to this Agreement.

17.—TIMETABLE FOR PAYMENT

	Clause	Mile Stones	Certified By	Payment
1.	Signing of Agreement & Commitment to Restructure (Cl.12.2)	Nil	N/A	On registration of the Enterprise Bargaining Agreement $25.00
2.	Key Performance Indicators (Cl.13.3)	M2a M2b	Audit to be carried out by the consultant or internal trainer who provides the initial training	$12.00 on achievement of both milestones
3.	Autonomous Work Team's (Cl.13.5)	M3a M3b	Peak Steering Team	$13.00 payable on the achievement of both milestones but not before 1 July 1997.
4.	Quality Assurance (Cl.13.2)	M1a M1b	To be certified by a body such as the Australian Quality Council to whom Council will apply for accreditation.	$9.50 payable on achievement of the first milestone M1a but not before 1 July 1997. $9.50 payable on achievement of the second milestone M1b but not before 1 July 1997.

GUIDELINES

1. The Council agrees to provide appropriate training and resources to enable the milestones to be achieved.

2. All Parties agree to fully support the achievement of the milestones.

3. The Parties understand that payments will only be made when the milestones are achieved throughout all work areas covered by this Agreement. For example, although one work area has completed it's key performance indicators and met all the requirements pursuant to the milestone a payment will not be payable until all the work areas achieve those milestones.

18.—EXECUTION OF AGREEMENT

The Common Seal of the Town of Kwinana was hereunto affixed in the presence of:

J.H.D. Slinger (signed)
MAYOR.

COMMON SEAL

R.K. Smillie (signed)
TOWN CLERK.

COMMON SEAL

J. Sharpe-Collett

DATE 24/3/97

Signed on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch

---

VALEY BRICKLAYING INDUSTRIAL AGREEMENT No. AG 51 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

Valey Pty Ltd trading as Holyoake Bricklaying Contractors

No. AG 51 of 1997.

Valey Bricklaying Industrial Agreement

COMMISSIONER P.E. SCOTT.

11 April 1997.

Order.

HAVING heard Mr G Giffard on behalf of the Applicants 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 Valey Bricklaying Industrial Agreement in the terms of the following schedule be registered on the 12th day of March 1997.

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

Schedule.

1.—TITLE

This Agreement will be known as the Valey Bricklaying 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. Apprentices
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. All-In Payments
18. Pyramid Sub-Contracting
19. Fares and Travelling
20. 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 and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Valey Pty Ltd trading as Holyoake Bricklaying Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be a member of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 10 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions 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.—APPRENTICES

The Company shall endeavour to ensure that it adheres to a ratio of 1 Apprentice for every 5 building workers employed, so long as the work of apprentices cannot be used to displace builders labourers.

14.—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.

15.—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-deployment/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.

16.—SICK LEAVE

For sick leave accrued after the date of signing 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.

17.—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.

18.—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.

19.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

20.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B Drug and Alcohol, Safety and Rehabilitation Program.

Signed for and on behalf of—

	Common Seal
The Unions	(signed)
	Date: 5/2/97
	Common Seal
	(signed)
	Date: 10/2/97
The Company	VALEY PTY LTD TRADING AS BRICKLAYING CONTRACTORS
	(signed)
	Date: 4/2/97
	ANTHONY HOLYOAKE
	(Print name)

APPENDIX A—WAGE RATES

1 February 1997

	Hourly Rate
Labourer Group 1	$15.11
Labourer Group 2	$14.59
Labourer Group 3	$14.20
Plasterer, Fixer	$15.70
Painter, Glazier	$15.35
Signwriter	$15.68
Bricklayer	$15.64

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 members(s) at the two hour BTG Drug and Safety in the Workplace training course.

WESLEY COLLEGE (ENTERPRISE BARGAINING) AGREEMENT 1996
No. AG 66 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Wesley College.

No. AG 66 of 1997.

Wesley College (Enterprise Bargaining) Agreement 1996

15 April 1997.

Order.

HAVING heard Ms T. Howe on behalf of the Applicants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Wesley College (Enterprise Bargaining) Agreement 1996 filed in the Commission on the 10th day of March 1997 be registered effective from the 2nd day of April 1997.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

1.—TITLE

This agreement shall be known as the Wesley College (Enterprise Bargaining) Agreement 1996 and shall replace the Wesley College (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of the Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objectives
10. Salary Rates
11. Agreed Beneficial Provisions
12. Other Matters
13. No Reduction
14. Dispute Resolution Procedure
15. No Further Claims
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Wesley 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.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all teachers and other members of staff who are employed by the College within the scope of the Independent Schools' Teachers' Award 1976 (the Award). Instrumental peripatetic tutors are specifically excluded from the scope of this agreement.

(2) The number of employees currently covered by this agreement is 94.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on 2nd April 1997 and shall apply until the 31st December 1997.

6.—EXPIRATION OF THE AGREEMENT

On the expiration of this agreement, and in the absence of the registration of a subsequent enterprise agreement, the provisions of the Award and/or this agreement, whichever is the greater, shall prevail for the purposes of the conditions of employment which will apply to employees covered by this agreement.

7.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award. Where there is any inconsistency between this agreement and the award this agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

The bodies party to this agreement have formed a single bargaining unit. The single bargaining unit has conducted negotiations and reached full agreement with the College.

9.—OBJECTIVES

In reaching this agreement, the parties have recognised a mutual responsibility to safeguard and enhance the quality of teaching and learning in the College and the public perception of it. To this end, teachers and other members of staff agree that they will act at all times in the best interests of the College, and respect the College's policies and ethics as discussed with staff and published in the Staff Handbook.

The parties agree that it is the role of teachers and other members of staff to draw upon their training, their experience and their own personal qualities to create conditions both inside and outside the classroom which are conducive to learning and, through their relationships with students at the College, seek to foster and develop the capabilities which each child has. Both parties agree that educational administrators at all levels in schools have the responsibility to establish and maintain an ordered environment for learning within which teachers and other members of staff are able to develop their students' capabilities.

Against this background the nature and purposes of this agreement are:

(1) To consolidate and develop further initiatives arising out of the award restructuring process in order to continue the process of enhancing the professionalism and development of teachers and their teaching so as to maximise the effectiveness of the teaching-learning process.

(2) To safeguard and improve the quality of teaching and learning by emphasising the upgrading of teachers' professional skills and knowledge.

(3) To encourage and enable the College and teachers alike to accept mutual responsibility for maintaining a working environment which will ensure that the College and its staff become genuine participants and contributors to the process of achieving the College's

aims and objectives within the framework of the College's educational philosophy and ethos as a College within the Uniting Church in Australia.

10.—SALARY RATES

(1) The minimum annual rate of salary to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be shown in the following table and shall be payable on and from:

	1.1.96	1.7.96	1.1.97	1.7.97
Step 1	24,161	24,765	26,127	26,911
Step 2	25,629	26,269	27,714	28,546
Step 3	27,096	27,773	29,301	30,180
Step 4	28,790	29,510	31,133	32,067
Step 5	30,371	31,130	32,842	33,827
Step 6	31,725	32,519	34,307	35,336
Step 7	33,080	33,907	35,772	36,845
Step 8	34,773	35,642	37,603	38,731
Step 9	36,636	37,552	39,617	40,805
Step 10	38,160	39,114	41,265	42,503
Step 11	39,515	40,503	42,730	44,012
Step 12	41,209	42,239	44,562	45,899
Step 13	42,902	43,974	46,393	47,785

(2) These salary increases are conditional upon both parties agreeing that during the term of this agreement there shall be a complete review by the parties of the enterprise bargaining process within the College with specific reference to discussion on the options available under both State and Federal legislation.

11.—AGREED BENEFICIAL PROVISIONS

(1) Conditions of Appointment of New Teachers

(a) From the beginning of 1995 all newly appointed staff will be offered a one year appointment on probation. A teacher appointed to his or her first teaching position who, at the end of the initial twelve months, is deemed by the College through the induction process not to have developed adequate teaching skills, may be re-appointed as a temporary teacher for a further year.

(b) Appointment as a permanent teacher will be subject to the satisfactory completion of a process of professional performance appraisal as determined by the Head.

(2) Regular Performance Appraisal

(a) All members of the College teaching staff agree to participate in regular performance appraisal at periods of not greater than three years. In the first two years of any three year period the process will involve self evaluation, followed by peer evaluation, and then formative evaluation by the teacher's immediate superior. In the third year, self evaluation, peer evaluation and formative evaluation by one's immediate superior will be followed by summative evaluation by the Head or the Deputy Head of the College.

(b) This will involve particular evaluation of teacher effectiveness through consideration of achievement of College and subject departmental objectives in student learning, as well as the teacher's overall contribution to the College.

(c) A teacher may request summative performance appraisal in any given year.

(d) The Head has the discretion to accelerate through the salary scale by more than one increment a teacher not yet at the top of the salary scale who has completed a successful summative performance appraisal.

(e) As an outcome of completion of a successful summative performance appraisal, at the discretion of the Head, a three year trained teacher may progress beyond step 9 of the salary scale.

(3) Professional Development

(a) The professional development of teachers at the College is an essential part of the gradual improvement in the quality of the teaching-learning process. The College and the teaching staff acknowledge that the upgrading of skills and knowledge can best occur when both the College and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teacher's time.

(b) For the duration of this agreement, members of the teaching staff agree to undertake half of their approved professional development outside school hours, and the College will employ relief teachers to cover not more than approximately 50% of the time for which members of the teaching staff are absent from their normal teaching duties as a result of their participation in approved professional development activities the remaining provision of relief staff to come from the College's internal arrangements for relief and absent teachers. The calculation of this will be done with regard to the whole campus and to the actual proportion of teaching staff undertaking professional development over a twelve month period rather than by reference to individual members of staff.

(c) When the College deems it necessary as the result of professional performance appraisal, for a teacher to participate in professional development to upgrade the teacher's skills and knowledge, the College will assist the teacher by making appropriate provision for resources and time for the teacher to undertake that professional development.

(4) Common Room Meetings with College Council

(a) Regular meetings will continue to take place between the Executive Committee of the College Council and the Common Room Committee for discussion of matters of mutual interest and concern. These meetings may be initiated either by the Council or by the Common Room Committee. Formal contact with the Council or its members for individual members of staff is usually arranged through the Head.

(b) Members of staff agree to respect confidentiality in regard to information to which they have access regarding students, other staff and/or parents.

(5) Other Employment

(a) Members of staff undertaking other employment outside the College understand that, in certain circumstances, it may be desirable they inform the Head. Such outside employment, which, for the purposes of this agreement includes any work done as a consultant, or as a self-employed person in a personal or family business for which the member of staff receives remuneration, should not impinge on the satisfactory fulfilment of the staff member's professional responsibilities and will not involve work undertaken during the hours in which the staff member is carrying out his or her normal school-related duties.

(b) Members of staff must have the prior approval of the Head in writing to use College equipment in connection with such employment.

(6) Professional Responsibilities

(a) Teaching at the College is a holistic activity. While the emphasis lies in classroom teaching duties, teachers also participate in the College's religious life and activities, formal and informal pastoral care responsibilities and supervisory responsibilities, as well as contributing to and participating in the College's programme of co-curricular activities. Both part-time and full-time members of staff may also be requested by the Head, Deputy Head and/or Head of the Preparatory School to carry out other duties and responsibilities from time to time.

(b) Members of staff agree to demonstrate sympathy with the support for the College's ethos and values as a College within the Uniting Church in Australia.

(c) Duty of care responsibilities must be considered in the planning of all activities conducted by the College.

(d) Members of staff accept that part of their duties in pastoral care of students involves being available to

meet with parents of students they teach on formally designated parent-teacher interview evenings and, if necessary, at other times after school hours by mutual arrangement.

(e) Much of the life and culture of the College is derived from school activities involving teachers and students and conducted outside regular classroom contact.

(f) As determined by the Head in consultation with the staff member, all members of staff including part-time staff where appropriate, agree to contribute to, and participate in, co-curricular activities after school, on Saturday mornings or all day on Saturdays or in the evening.

(g) Collaborative planning between the College and the staff in the allocation of teachers to activities conducted by the College will take into account the competence, skills, qualifications and interest of teachers as well as their professional development and family responsibilities.

(7) Payment of Relief Teachers

Relief teachers employed for five days or less may be engaged by the day or half day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(8) Long Service Leave

(a) Full time teachers at the College who have completed eight years of continuous service with the College shall continue to be entitled to take ten weeks of long service leave on full pay. This leave shall normally be taken as a full term by mutual arrangement with the Head.

(b) After seven years of service, where employment is terminated by the teacher's death or in any circumstances other than serious misconduct, the leave entitlement shall be such proportion of ten weeks as the period of service bears to eight years of service.

(9) Parenting Leave

The Minimum Conditions of Employment Act 1993 sets 52 weeks of approved leave provided the employee has served for twelve months and has given the employer ten weeks' notice of his or her intention to apply for leave.

(10) Promotion Positions

(a) While maintaining the promotions structure described in the award, under this agreement the College has the discretion to adapt the structure to meet its educational needs. The normal processes of appointment to promotion positions in the College will continue to be followed.

(b) Responsibility allowances at the College in 1996 will remain on a four-level scale commencing at $1,500 ranging through $3,000 and $4,500 to $6,000 per year respectively, at the top level (Level 1). On 1 January 1997, these allowances will increase to $1,915 at Level 4, $3,825 at Level 3, $5,745 at Level 2 and $7,650 at Level 1 per year respectively.

(c) Teachers appointed to some promotion positions receive varying reductions in the normal classroom teaching load in recognition of the demands of their special responsibilities at the discretion of the Head.

(d) Appointments to positions of Head of Department, Head of House or Deputy of the Preparation School on or before 1 January 1996 are fixed-term appointments for a period of six years renewable for three years on each of two successive occasions to a maximum of twelve years. After this twelve year period the person may be reappointed with the approval of the College Council. When a person, who has served in such a position for a minimum of six years, relinquishes that position, they will continue to receive an allowance fixed at the value of the allowance they had at the time they relinquished the post. During this period the person will not be eligible to receive a Senior Teacher, Key Teacher or Leading Teacher Allowance. At the time of relinquishing the post their teaching load will return to the normal load of a classroom teacher. Should the Senior Teacher, Key Teacher or Leading Teacher allowances, at any time, exceed the fixed allowance they were receiving, they will receive the higher of the allowances provided that the eligibility criteria is met.

(e) Appointments to positions of Head of Department, Head of House or Deputy of the Preparatory School after 1 January 1996 will also be fixed term appointments for a period of six years renewable for three years on each of two successive occasions to a maximum of twelve years. After this twelve year period the person may be reappointed with the approval of the College Council. When a person, who has served in such a position for a minimum of six years, relinquishes that position, they will continue to receive for a period of three years an allowance fixed at the value of the allowance they had at the time they relinquished the post. During this period the person will not be eligible to receive a Senior Teacher, Key Teacher or Leading Teacher Allowance. At the conclusion of the three year period the person's remuneration returns to the level appropriate for the class room teacher under the agreement. At the time of relinquishing the post their teaching load will return to the normal load of a classroom teacher.

(f) A Master or Mistress in Charge of Sports and Games or of non-sporting co-curricular activities, where the Head deems it appropriate, will receive an allowance as determined by the Head on a scale between $500 and $1,500 per year depending on the particular demands of the sport or activity. A Master or Mistress in Charge of Sports and Games and of other activities may be required to assist in other co-curricular activities.

(g) Unlike other promotion positions, a member of staff may hold a position as Master or Mistress in Charge of a sport or activity concurrently with another promotion position.

(11) Senior Teacher Positions

(a) Positions similar to those for Senior Teachers have been established at the College for exemplary classroom teachers at three respective levels of performance: Senior Teacher Level 1, called Senior Teachers; Senior Teacher Level 2, called Key Teachers; and Leading Teachers; receiving additional allowances of $1,500, $3,000 and $4,500 per year respectively. Responsibility Allowances and Senior Teacher Allowances are not cumulative, however, a staff member may hold these concurrently and be paid the higher of the two allowances.

(b) The duties and responsibilities for teachers as Senior Teachers or Key Teachers will be determined by the Head in the light of the award. The criteria to be met by teachers aspiring to Senior or Key Teacher positions will be in accordance with the award. Applicants for Key Teacher positions will be expected to satisfy each criterion to a greater degree than applicants for Senior Teacher positions.

(c) The essential difference between a Senior Teacher and a Key Teacher is that where the Senior Teacher position is in recognition of the teacher who is an exemplar, the Key Teacher position is in recognition of the teacher who is not only an exemplar, but also provides outstanding service to the College in other areas.

(d) The duties and responsibilities of Leading Teachers appointed at the third level will be determined by the Head as appropriate to each individual case.

(e) No reduction in the normal classroom teaching load will apply in the case of teachers appointed to these positions.

(f) Application for appointment to the position of Senior Teacher, Key Teacher and Leading Teacher will be made to the Head and appointment will follow the satisfactory completion of an agreed procedure of professional performance appraisal specifically established in relation to the positions. Application

for appointment to levels above Senior Teacher will normally not be made until the member of staff has served at the next lowest level for a minimum of three years.

(g) Appointment as a Senior Teacher, Key Teacher or Leading Teacher will be for a period of three years and re-appointment at that level, or appointment to a higher level will depend upon formal application and further professional performance appraisal, and on the continuing nature of the duties associated with the position.

12.—OTHER MATTERS

The parties agree to discuss these matters that are of relevance to either the College or the staff:

(1) Determination of selection criteria and duties and responsibilities for Leading Teachers.

(2) Continuation of the investigation of ways of implementing an agreed process which allows teachers to defer taking part of their salary for a set period of time and to be repaid the sum of money at a later date when they take leave.

(3) The movement of staff between the 3 Year and 4 Year trained pay scales.

(4) Leave provisions, in particular;

(a) parenting leave,

(b) leave without pay;

(c) long service leave.

13.—NO REDUCTION

Nothing contained herein shall entitle the College to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

14.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as:

(a) any question, dispute or difficulty arising out of this agreement or

(b) any question, dispute or difficulty affecting the relationship between the employer and an employee or group of employees.

(2) The following procedure shall apply to the resolution of any dispute:

(a) the parties to the dispute shall attempt to resolve the matter by mutual discussion and determination;

(b) if the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the agreement together with any additional representative as may be agreed by the parties;

(c) if the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

15.—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.

16.—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 agreements, whether they involve the College or not.

17.—SIGNATORIES

J.M. Beanall

B.A. Murdoch (Secretary)

C.L. Readhead (Chairman)

Wesley College

T.I. Howe

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

---

WESTCARE DISABLED EMPLOYEES WAGES AGREEMENT No. 2 No. AG 14 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Disabled Workers' Union of Western Australia

and

Westcare Incorporated.

No. AG 14 of 1997.

COMMISSIONER C.B. PARKS.

8 April 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT No. AG 14 OF 1997

HAVING heard Mr G. Hocking (of Counsel) on behalf of the first named party and Mr P.G. Robertson on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement titled the Westcare Disabled Employees Wages Agreement No. 2, filed in the Commission on 20 January 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This agreement shall be known as the Westcare Disabled Employees Wages Agreement No.2.

2.—SCOPE

This agreement applies to disabled employees of Westcare Incorporated ("the employee'), members of The Disabled Workers Union of Western Australia ("the Union"), employed at the employees premises in Carrington Street, Nedlands.

3.—TERM

This agreement shall expire on 6 October 1997.

4.—VARIATION

The Westcare Disabled Employees Wages Agreement No. AG 128 of 1994 shall be varied by adding a new clause 7 as follows:

(7) 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 utilised.

(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 rate payable to the employee during the trial period shall be determined by consultation between the employer, the employee and the union.

(d) Work trials should include induction or training as appropriate to the job being trialed.

(8) The conditions of employment to apply during a trial period or in a continuing employment relationship shall be agreed in writing in order to satisfy the provisions of Section (9) of the Minimum Conditions of Employment Act 1993.

(9) In the negotiation or determination of wages under this clause all parties shall take into account that the additional costs from increased wages and related costs do not jeopardise the continuing operations of the employer or prevent or restrict the recruitment of disabled employees in the future.

(10) The wage rates payable under this clause shall be altered in accordance with any change to the Minimum weekly Rate of pay prescribed under the Minimum Conditions of Employment Act 1993 applicable from time to time with effect from the same date as the change to the Adult Minimum Weekly Rate.

(11) The provisions of this agreement shall come into operation and effect on and from 1 January 1997.

5.—NUMBER OF EMPLOYEES BOUND

The parties estimate that 110 employees will be bound by this agreement.

Signed in PERTH of this 25th day of March 1997

On behalf of

common seal affixed

WESTCARE INCORPORATED

(signed by R Howell)

On behalf of

THE DISABLED WORKERS UNION OF WESTERN AUSTRALIA

(signed by R A Hughes)

President

(signed by G Cassidy)

Secretary

WOODROFFE INDUSTRIES LIMITED (OSBORNE PARK) ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 68 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

Woodroffe Industries Limited.

No. AG 68 of 1997.

Woodroffe Industries Limited (Osborne Park) Enterprise Bargaining Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

8 April 1997.

Order.

HAVING heard Mr G Sturman on behalf of the Applicant and Mr D Ryan 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 Woodroffe Industries Limited (Osborne Park) Enterprise Bargaining Agreement 1996 be registered in accordance with the following Schedule and shall have effect from the beginning of the first pay period commencing on or after the 20th day of March 1997.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Woodroffe Industries Limited (Osborne Park) Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application
4. Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Awards
7. Objectives of Agreement
8. Wages
9. Employee Share Scheme
10. Consultation
11. No Extra Claims
12. Avoidance of Industrial Disputes
13. Non-Precedent
14. National Standards
15. Journey Accident Insurance Cover
16. Renewal of Agreement.
Signatories to Agreement.

3.—APPLICATION

This Agreement shall apply to Woodroffe Industries Limited (ACN 008 080 466), 55 Hector Street, Osborne Park, W.A. 6017 and all employees at that site who are bound only bound by the terms of the Sheet Metal Workers' Award No. 10 of 1973 or the Metal Trades (General) Award No. 13 of 1965, insofar as those provisions relate to the parties referred to in Clause 4.—Parties Bound of this Agreement.

4.—PARTIES BOUND

The parties to this Agreement are—

Woodroffe Industries Limited.

All employees engaged in any of the occupations, industries or callings specified in the Sheet Metal Workers' Award No. 10 of 1973 or the Metal Trades (General) Award No. 13 of 1965, employed at 55 Hector Street, Osborne Park.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

This Agreement applies to approximately 100 employees.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from lst September 1996 until 28th February 1998.

6.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the Sheet Metal Workers' Award No. 10 of 1973 and the Metal Trades (General) Award No. 13 of 1965. Where there is any inconsistency between this Agreement and the Awards referred to herein, this Agreement shall take precedence to the extent of the inconsistency.

7.—OBJECTIVES OF AGREEMENT

The objectives of this Agreement are to increase the productive performance of the Osborne Park operations. For specific measures to realise such increases, refer to Appendix A attached hereto.

8.—WAGES

(1) (a) Weekly wages will be increased as follows—

Column 1	Column 2	Column 3	Column 4	Column 5
3%	3%	1%	$10.00	$5.00

(b) The increases specified in Columns 2 and 3 of paragraph (a) hereof will be paid on the actual rate of pay of an employee as at 28th February 1997.

(c) The percentage increases as set out are to apply on the actual rate of pay of an employee as at 28th February 1997 and that rate is the award plus various over award payments that apply to certain categories of employees.

(2) The wage increases in subclause (1) hereof shall be payable as follows—

(a) The percentage shown in Column 2 shall be included in the base rate of pay, subject to achievement of the productivity targets laid down in subclause (1) of Clause 1.—Productivity Targets in Appendix A and will be paid for all purposes of the Award.

(b) The percentage shown in Column 3 shall be payable from the first pay period commencing on or after lst March 1997, subject to achievement of the productivity targets specified in paragraph (a) hereof and will be paid for all purposes of the Award.

(c) The amount shown in Column 4 shall be payable as a bonus, subject to achievement of the absenteeism target set out in subclause (3) of Clause 2.—Attendance Targets in Appendix A.

(d) The amount shown in Column 5 shall be payable as a bonus from the first pay period to commence on or after lst April 1997, subject to achievement of the lost time injury hours target prescribed by subclause (4) of Clause 2 in Appendix A.

(3) The percentage shown in Column 1 of paragraph (a) in subclause (1) hereof is the second 3% paid for the achievement of targets under the Du Feu Enterprise Bargaining Agreement 1995. This payment shall become permanent on lst September 1996 and shall apply for all purposes of the Award.

(4) The wage increases set out in subclause (1) hereof shall not be absorbed into any over-award payment.

(5) The wage increases specified in Columns 2 and 3 in paragraph (a) of subclause (1) shall be paid as per subclauses (2) and (3) of Clause 1 in Appendix A.

(6) The bonus payment specified in Column 4 of subclause (1) hereof is a flat rate bonus and shall be paid as per arrangements specified by paragraph (d) in subclause (3) of Clause 2 in Appendix A. The bonus will not be available for casual employees.

(7) The bonus payment specified in Column 5 of subclause (1) hereof is a flat rate bonus and shall be paid as prescribed by subclause (d) in subclause (4) of Clause 2.—Payment of Bonus in Appendix A.

9.—EMPLOYEE SHARE SCHEME

(1) As Woodroffe is a subsidiary of Hills Industries Limited, an offer to participate in the Hills Industries Limited Employee Share Scheme will be made to Woodroffe employees and shares will be offered free of charge to employees.

(2) The amount of shares offered will be 275 Hills shares per employee, subject to the following conditions.

(a) Employees will have had at least 12 months service with Woodroffe Industries Limited at lst January 1997.

(b) Employees will be permanent employees of Woodroffe Industries Limited.

(c) Participating employees shall agree to be bound by the conditions of the Hills Industries Employee Share Scheme.

(3) The offer documents will be distributed by the end of January 1997.

10.—CONSULTATION

The process for parties to this Agreement to consult each other about matters involving changes to the organisation, or performance of work, is through the Consultative Committee.

11.—NO EXTRA CLAIMS

It is a term of this Agreement that each of the employees bound by this Agreement will not pursue any extra claims, award or over-award, during the life of the Agreement.

12.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement shall observe the Avoidance of Industrial Disputes procedures prescribed by Clause 27 of the Sheet Metal Workers, Award No. 10 of 1973.

13.—NON-PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

14.—NATIONAL STANDARDS

This Agreement shall not operate to cause an employee to suffer a reduction in ordinary time earnings, or in national standards such as standard hours of work, annual leave or long service leave.

15.—JOURNEY ACCIDENT INSURANCE COVER

Journey Accident Cover will continue as provided in the former Du Feu Enterprise Bargaining Agreement 1995.

16.—RENEWAL OF AGREEMENT

Negotiations shall commence not less than three months prior to the expiry of this Agreement for a replacement document.

SIGNATORIES TO AGREEMENT

For and on behalf of Woodroffe Industries Limited

(signed)

28/02/97.

For and on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

(signed)

27/02/97. Common Seal

For and on behalf of the employees of Woodroffe Industries Ltd—

(signed)

4/3/97.

WOODROFFE INDUSTRIES LIMITED (OSBORNE PARK) ENTERPRISE BARGAINING AGREEMENT 1997

APPENDIX "A"

SPECIFIC MEASURES TO IMPROVE PRODUCTIVE PERFORMANCE

1.—PRODUCTIVITY TARGETS

(1) During the life of this Agreement the following targets will be maintained—

Door Frames:	An average of 6.25 completed frames per employee per hour with no decrease in quality.
Robe Frames:	An average of 2.53 completed frames per employee per hour with no decrease in quality.
Roll Forming:	An increase in roll forming production to be sustained by an over-all average of 4% with no decrease in quality.

(2) If after any three-month period the targets in Clause (1) hereof are not met, then the wage increases referred to in paragraphs (a) and (b) of subclause (2) in Clause 8.—Wages of the Agreement will be withdrawn until the requirements have been fulfilled again for a continuous period of three months, unless the Consultative Committee can substantiate reasons for the shortfall.

(3) (a) The increase, subject to the targets being achieved, will be paid to all employees covered by this Agreement.

(b) Productivity indicators and production targets for the Windows Division will be developed and implemented during the life of this Agreement. The Division will be included in the Agreement at the time of implementation of the targets when employees of the Division shall also qualify for the wage increases specified by paragraphs (a) and (b) of subclause (2) in Clause 8.—Wages of this Agreement. Payment of the wage increases shall be as specified in subclause (2) of this clause.

(4) (a) During the life of this Agreement, productivity indicators and measures of work performance will be developed for all areas of the factory.

(b) Employees, through the Consultative Committee, agree to actively and positively participate in the development of those measures and any changes to work practices.

(c) Management will consult on any proposed changes before their implementation.

(5) (a) The Consultative Committee will monitor the implementation of this Enterprise Bargaining Agreement to ensure that present productivity targets are maintained, that

any new targets are achieved and that work practices meet the requirements set out in subclauses (1), (2) and (3) of Clause 1 of this Appendix to justify payments and bonuses prescribed by subclause (1) of Clause 8.—Wages.

(b) In the event of disagreement, the provisions in Clause 11.—Avoidance of Industrial Disputes of the Agreement shall be applied.

2.—ATTENDANCE TARGETS

(1) The Company will display targets and monthly achievements high-lighting total site performance throughout the factory.

(2) Management will work with the appropriate committees to assist in the achievement of those targets.

(3) A flat bonus of $10.00 per week will commence to be paid, as prescribed in paragraph (c) of subclause (2) in Clause 8.- Wages of the Agreement, as soon as the following target is met—

(a) Definitions:

"Absenteeism" is defined as hours lost to paid and unpaid sick leave, plus any other unplanned absence and is calculated as a percentage of the total available working hours. It does not include annual leave, long service leave, public holidays, bereavement leave, jury service, scheduled days off or training. It also excludes any absence by casual employees.

"The Average" of absenteeism is defined by absenteeism over the preceding three months.

(b) The target is for average absenteeism to remain at or below 3%.

(c) Achievement:

The average will be calculated and distributed to employees as soon as possible after the beginning of each month.

If the average meets the targets specified, the bonus will be paid for all pay period falling within the month. Should any pay period occur prior to the release of the average, then any bonus will be back-dated to the start of the month and paid for that period.

If the average exceeds the target figure, the bonus will be suspended for that month until such time as the target is met.

(d) Payment of Bonus:

A weekly bonus will not be paid to any person who has any unplanned time off, including sick leave, due to absenteeism, as defined, in any given week (including starting late or finishing early without management approval.

A genuine reason for lateness of work, time off during work or an early finish can be agreed to by the Production Manager.

Subject to achievement of the targets specified, the bonus will be paid on annual leave and public holidays.

The bonus will not be paid to any person on long service leave or as an additional payment while an employee is an worker's compensation.

(e) In the case of any general dispute between the parties, the Consultative Committee will consult on the issue.

(4) Reduced Lost Time Injury Hours:

A flat bonus of $5.00 per week will be paid, as prescribed by paragraph (d) of subclause (2) in Clause 8.—Wages of the Agreement, if the following target is met—

(a) Target:

Lost time injury hours to remain at or below 0.4% of available working hours in any given quarter of the year. A "quarter" is defined as January to March, April to June, July to September and October to December.

(b) Method of Achievement:

The process by which lost time injury hours will be reduced is by employees—

* Not using equipment unless suitably trained.
* Complying with Company O. S. & H. policies and procedures.
* Bringing to the attention of management procedures which appear to be in conflict or are no longer relevant,
* Reporting all injuries and unsafe conditions to the appropriate person.
* Attending and completing follow-up actions from toolbox meetings.
* Keeping their work area tidy.
* Where qualified, training other employees.

(c) Definition:

Lost time injury hours are defined as a person missing at least one full shift, lost after an injury has occurred, excluding journey injuries.

(d) Payment of Bonus:

The bonus will be paid with usual wages.

If lost time injury hours exceed the target level in any given quarter, the bonus will be suspended in the next quarter and until such time as lost time injury hours again meet the target.

(5) (a) Any O. S. & H. matters raised by employees through the O. S. & H. Committee that have not been acted upon by management and which results in lost injury hours will not be included in calculations for the bonus.

(b) In the case of a dispute between the parties, the O. S. & H. Committee will consult on the issue.

3.—CLASSIFICATIONS

During the life of this Agreement all classifications and job descriptions will be reviewed, the purpose being to ensure that—

* There is fairness and equity between the different functions undertaken by, and remuneration paid to, employees.
* Opportunities for career advancement have been identified.
* Multi-skilling provides for more interesting, flexible and highly-skilled work.

4.—TAKING LEAVE

(1) Accrued long service leave may be taken in blocks of one week or more by agreement between the employee concerned and management.

(2) Annual leave may be taken as mutually agreed by management and the employee concerned.

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES (CONSTRUCTION) AWARD 1987
No. R14 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Adsigns Pty Ltd & Others

No. 334 of 1997.

Building Trades (Construction) Award 1987.

COMMISSIONER J.F. GREGOR .

22 April 1997.

Order.

HAVING heard Ms J Harrison on behalf of the first named party and Mr K Richardson & Ms S Laferla 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 Building Trades (Construction) Award 1987, No. R 14 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 14 April 1997.

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

Schedule.

1. Clause 50.—Superannuation: Delete this clause and insert in lieu thereof the following:

50.—SUPERANNUATION

(1) DEFINITIONS

For the purpose of this clause:

(a) "Superannuation Legislation" means the Federal legislation as varied from time to time, governing the superannuation rights and obligations of the parties, which includes the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993.

(b) "Fund" means a complying fund, as defined in the superannuation legislation.

(c) "Eligible employee" shall mean an employee who is entitled to receive employer superannuation contributions in accordance with the superannuation legislation.

(d) "The relevant fund" means the fund selected in respect of an employee pursuant to subclause (4) hereof.

(e) "Ordinary time earnings" (which, for the purposes of the Superannuation Guarantee (Administration) Act 1992, will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowances, trade allowance, shift loading and leading hand. in charge or supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received for ordinary hours of work. All other allowances and payments are excluded.

(2) CONTRIBUTIONS

(a) In accordance with the Superannuation legislation and subject to the Trust Deed of the relevant fund, an employer shall contribute an amount on behalf of each eligible employee into a relevant superannuation fund, which reflects the employers' liability as prescribed in Part 3 of the Superannuation Guarantee (Administration) Act 1992 (as set out in (b) below).

(b) The level of contributions required under the Superannuation Guarantee (Administration) Act 1992 are as follows:

Financial Year	(1 July—30 June)
Percentage	
1996—97	6
1997—98	6

(3) EMPLOYEE CONTRIBUTIONS

(a) Subject to the rules of the Fund, employees of a respondent employer who wish to make contributions to the Fund additional to those being paid pursuant to subclause (2) hereof, shall be entitled to do so. Such employees may either forward their own contribution directly to the Fund administrators or, where it is practicable to do so, authorise the employer to pay into the Fund from the employee's wages, amounts specified by the employee.

(b) Employee contributions to the Fund deducted by the employer at the employee's request shall be held in Trust on the employee's behalf and be subject to the following conditions:

(i) The amount of contributions shall be expressed in whole dollars.

(ii) Employees shall have the right to adjust the level of contribution made on their own behalf from the first of the month following the giving of three months' written notice to the employer. Provided that by agreement with the employer, employees may vary their additional contribution in extenuating circumstances at other times.

(iii) Contributions deducted under this clause shall be forwarded to the Fund at the same time as contributions under subclause (2) hereof

(4) SUPERANNUATION FUND

(a) The employer shall make superannuation contributions, or improvements pursuant to this clause, to any of the following funds (that meet the definition set out in subclause (1)(b)):

(i) C+BUS, CTRF, the Westscheme Superannuation Scheme; Building Employees Superannuation Trust; or

(ii) any fund agreed between the employer and eligible employees, and the union or unions, where applicable; or

(iii) any fund which has application to employees in the principal business of the employer, where eligible employees covered by this award are a minority of award-covered employees; or

(iv) any other approved occupational superannuation fund to which an employer or eligible employee who is a member of the religious fellowship known as The Exclusive Brethren elects to contribute.

(b) Provided that an employer shall not be required to contribute to more than one fund in respect of eligible employees employed under this Award.

(c) Subject to the terms of this clause, where there is a dispute over the choice of fund in respect of one or more employees, the matter shall be referred to the WA Industrial Relations Commission for determination.

(5) FUND MEMBERSHIP

(a) The employer shall make an eligible employee aware of his/her entitlements under this clause and shall arrange for such eligible employee the opportunity to become a member of the relevant Fund. An eligible employee shall, within a period of 30 days from commencement of employment complete the necessary application forms to become a member of the relevant Fund, to the satisfaction of the Trustees of that Fund, in order to be entitled to the contributions prescribed in subclause (2) hereof

(6) EXEMPTION

(a) This clause shall be deemed to be satisfied by an employer, who as at 1 December 1991 or at the date of becoming respondent to this award, is already satisfying and continues to satisfy the requirements of subclause (2) hereof by providing superannuation contributions which

reflects the employers' liability as prescribed in Part 3 of the Superannuation Guarantee (Administration) Act 1992, or any higher amount as required by the Trust Deed of the relevant fund.

(7) ABSENCE FROM WORK

Subject to the Trust Deed to the Fund of which an employee is a member, the following provisions shall apply.

Paid Leave

(a) Contributions shall continue whilst a member of a Fund is absent on annual leave, sick leave, long service leave**,** public holidays, jury service, bereavement leave, or other paid leave.

Unpaid Leave

(b) Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

Work Related Injury or Illness

(c) In the event of an eligible employee's absence from work being due to work related injury or work related illness, contributions at the normal rate shall continue for the period of the absence provided that:

(i) the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this Award;

(ii) the person remains an employee of the employer.

CAN MANUFACTURING (PRODUCTION AND MAINTENANCE—AMALGAMATED INDUSTRIES PTY LTD) AWARD 1985
No. A4 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 Australia Branch

and

Westcan (A Division of Amcor Ltd) & Other.

No. 1749A of 1996.

COMMISSIONER J.F. GREGOR .

15 April 1997.

Order.

HAVING heard Mr C Young on behalf of the applicant and Mr D Sproule on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Can Manufacturing (Production and Maintenance—Amalgamated Industries Pty Ltd) Award 1985 as amended shall be further varied in accordance with the attached schedule.

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

Schedule.

1. Clause 6.—Rates of Pay. Delete subclause (2) of this clause and insert in lieu thereof the following:

(2) (a)

Classification	Rate Per Week $	1st & 2nd Arbitrated Safety Net Adjustment $	Total Per Week $	Hourly Rate $
Toolmaker	466.60	16.00	482.60	12.70
Base Tradesperson (as defined)	447.50	16.00	463.50	12.1974
Intermediate Can Making Tradesperson (as defined)	466.50	16.00	482.50	12.6974
Special Class Can Making Tradesperson (as defined)	473.20	16.00	489.20	12.8737
Electrical Installer	447.50	16.00	463.50	12.1974
Electrical Fitter	447.50	16.00	463.50	12.1974
Electrician Special Class	473.20	16.00	489.20	12.8737
Electrical Tradesperson's Assistant	367.80	16.00	383.80	10.10
Operator Grade 1 (as defined)	420.00	16.00	436.00	11.4737
Operator Grade 2 (as defined)	400.30	16.00	416.30	10.9553
Operator Grade 3 (as defined)	370.60	16.00	386.60	10.1737

(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 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.

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 Australia Branch

and

Westcan (A Division of Amcor Ltd) & Other.

No. 1749 of 1996.

COMMISSIONER J.F. GREGOR.

15 April 1997.

Order.

HAVING heard Mr C Young on behalf of the applicant and Mr D Sproule 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 application No. 1749 of 1996 made for the purpose of amending the Can Manufacturing (Production and Maintenance—Amalgamated Industries Pty Ltd) Award 1985 be and is hereby divided into the following separate parts—1749A of 1996 which is to be concluded by further order of the Commission that amends the aforenamed award to the extent agreed between the parties in relation to Clause 6.—Rates of Pay subclause (2); and

THAT 1749B of 1996 which shall be constituted by the disputed claims in relation to amendments to Clause 6.—Rates of Pay subclauses (3) and (8); and

THAT the proceedings to hear and determine matter number 1749B of 1996 be and hereby adjourned to a date to be fixed.

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

EGG PROCESSING AWARD 1978
No. R42 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers' Union of Western Australia, Union of Workers

and

W.A. Egg Marketing Board.

No. 390 of 1995.

Egg Processing Award 1978.

COMMISSIONER R.N. GEORGE.

30 April 1997.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Ms L. Howe 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 Egg Processing Award 1978 be varied in accordance with the following Schedule and that such variation shall have effect with respect to subclause (1)(a), (2) and (4)(a) of Clause 14.—Wages as from the beginning of the first pay period commencing on or after 30 March, 1995 and with respect to subclause (1)(b) of Clause 14.—Wages from the beginning of the first pay period commencing on or after 30 September 1995.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

Schedule.

1. Clause 14.—Wages: Delete subclauses (1) and (2) of this clause and insert in lieu the following—

(1) Adult Employees

(a) The following rates shall apply from the first pay period on or after 30 March 1995

	Base Rate	Arbitrated Safety Net Adjustment	Total Rate
	$	$	$
Machine Operator	363.67	8.00	371.67
Quality Controller	362.44	8.00	370.44
Freezer Room Attendant	355.47	8.00	363.47
Candler and/or oiler	353.01	8.00	361.01
Bench Hand	338.46	8.00	346.46
Trainee Candler and/or oiler	338.05	8.00	346.05
Packer and/or Cracker	338.05	8.00	346.05
Floor Hand	330.26	8.00	338.26

The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first $8.00 arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level sine I November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) The following rates shall apply from the first pay period on or after 30 September 1995

	Base Rate	Arbitrated Safety Net Adjustment	Total Rate
	$	$	$
Machine Operator	363.67	16.00	379.67
Quality Controller	362.44	16.00	378.44
Freezer Room Attendant	355.47	16.00	371.47
Candler and/or oiler	353.01	16.00	369.01
Bench Hand	338.46	16.00	354.46
Trainee Candler and/or oiler	338.05	16.00	354.05
Packer and/or Cracker	338.05	16.00	354.05
Floor Hand	330.26	16.00	346.26

The rates of pay in this award include the first $8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first $8.00 arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level sine I November 1991, Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this award include the second $8.00 per week arbitrated safety net adjustment payable under the December 1994 Sate Wage Decision. This second $8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since I November 1992 pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are no to be used to offset arbitrated safety net adjustments.

(2) Employees placed in charge of a section or in charge of other employees shall be paid the following allowances per week in addition to the rates prescribed elsewhere in this clause for the work performed—

	$
(a) Sectional Supervisors	
(i) Recievals	38.85
(ii) Materials	38.85
(iii) Pulp	38.85
(iv) Floor	38.85
(b) Other Supervisors	$
(i) Cleaning	26.39
(ii) Cases and Trolleys	26.39
(iii) Machine	26.39
(iv) Quality Control	26.39
(v) Floor (Depot)	26.39
(vi) Leading Hand	13.02

2. Clause 14.—Wages: Delete placitum (a) from subclause (4) and replace with the following—

(a) In addition to the rates of pay prescribed elsewhere in this clause the following service payments shall be paid—

	Per Week
After one year's service	8.10
After two year's service	9.33
After three year's service	11.38
After four year's service	15.48
After five year's service	19.17

ELECTRONICS INDUSTRY AWARD
No. A 22 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

A. D. Engineering Pty Ltd & Others.

No. 1580A of 1996.

Electronics Industry Award No. A 22 of 1985.

COMMISSIONER J.F. GREGOR.

9 April 1997.

Order.

HAVING heard Mr C Young on behalf of the applicant and Ms E Mackey and Ms V Paul on behalf of respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Electronics Industry Award No. A 22 of 1985, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 17 March 1997.

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

Schedule.

1. Clause 2.—Arrangement: Delete number and title 2A.—State Wage Principles—June 1991 in this clause.

2. Clause 2A.—State Wage Principles—June 1991: Delete this clause.

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

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $6.80 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each such meal by the employer or be paid $4.60 for each meal so required.

4. Clause 13.—Car Allowance: Delete subclause (3) of this clause and insert in lieu thereof:

(3) A year for the purpose of this clause shall commence on 1 July and end on 30 June next following.

RATES OF HIRE FOR USE OF EMPLOYEE'S OWN VEHICLE ON EMPLOYER'S BUSINESS

MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Rate per kilometre (cents)			
Metropolitan Area	57.3	51.2	44.5
South West Land Division	58.6	52.4	45.6
North of 23.5° South Latitude	64.2	57.8	50.3
Rest of the State	60.3	54.2	47.0
Motor Cycle (In All Areas)	19.6 cents per Kilometre		

5. Clause 15.—Distant Work: Delete subclauses (4) and (5) of this clause and insert in lieu thereof:

(4) An employee, to whom the provisions of subclause (1) of this clause apply, shall be paid an allowance of $24.10 for any weekend that the employee returns home from the job, but only if—

(a) The employee advises the employer or the employer's agent of the employee's intention no later than Tuesday immediately preceding the weekend in which the employee so returns;

(b) The employee 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.

(5) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job the employee shall be provided with suitable transport to and from that job or be paid an allowance of $10.60 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

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

A.D. Engineering Pty Ltd & Others.

No. 1580 of 1996.

Electronics Industry Award No. A22 of 1985.

COMMISSIONER J.F. GREGOR.

9 April 1997.

Order.

HAVING heard Mr C Young on behalf of the applicant and Ms E Mackey and Ms V Paul on behalf of respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT application No. 1580 of 1996 made for the purpose of amending the Electronics Industry Award No. A22 of 1985 be and is hereby divided in the following separate parts—1580A of 1996 which is to be concluded by further order of the Commission that amends the award to the extent agreed by the parties in an amended schedule B as submitted and relating to Clause 2.—Arrangement, Clause 2A.—State Wages Principles—June 1991, Clause 9.—Overtime, Clause 13.—Car Allowance, Clause 15.—Distance Work; and

THAT 1580B of 1996 which shall be constituted by disputed claims in relation to Clause 33.—Wages, part II—Construction Work: Clause 6.—Allowance for Travelling, Clause 7.—Distant Work, Clause 10.—Wages; and

THAT the proceedings to hear and determine matter 1580B of 1996 be and is hereby adjourned to a date to be fixed.

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

ENGINEERING TRADES (GOVERNMENT) AWARD 1967
Nos 29, 30 & 31 of 1961 and 3 of 1962.

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

Hon Minister for Construction and Others.

No. 469 of 1993.

Engineering Trades (Government) Award Nos 29, 30 & 31 of 1961 and 3 of 1962.

COMMISSIONER R.N. GEORGE.

17 April 1997.

Order.

HAVING heard Mr G. Sturman on on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred

Industries Union of Workers—Western Australian Branch; Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch and Ms L. Howe on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Engineering Trades (Government) Award 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 and from 11 March 1997.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: After the title "Fifth Schedule—Building Management Authority Wages and Conditions" insert the following new title—

Sixth Schedule—Named Parties to the Award

2. Fifth Schedule—Building Management Authority Wages and Conditions: After this Schedule insert a new Schedule as follows—

SIXTH SCHEDULE—NAMED PARTIES TO THE AWARD

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

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

---

FURNITURE TRADES INDUSTRY AWARD
No. A6 of 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Troy Development Corporation Pty Ltd trading as Masterfloors

and

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA & Os.

No. 521 of 1997.

Furniture Trades Industry Award
No. A6 of 1984.

COMMISSIONER P.E. SCOTT.

1 May 1997.

Order.

HAVING heard Mr S Foy on behalf of Troy Development Corp Pty Ltd trading as Masterfloors and Mr T Daly on behalf of The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Furniture Trades Industry Award be varied in accordance with the following Schedule and that such variation shall have effect on and from the 15th day of March 1997.

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

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert the following in lieu thereof:

2.—ARRANGEMENT

1. Title
1A. Statement of Principles—August 1996
2. Arrangement
3. Area
4. Scope
5. Term
6. No Reduction
7. Mixed Functions
8. Wages
9. Payment of Wages
10. Leading Hands
11. Setter Out
12. Casual Employees
13. Hours
14. Overtime
15. Meal Money
16. Shifts
17. Holidays
18. Annual Leave
19. Away from Home and Travelling Time
19A. Car Allowance
20. Contract of Service
20A Redundancy
21. Grinding Time
22. Under-Rate Employees
23. Piecework
24. Interviewing Employees and Inspection of Premises
25. Posting of Union Notices
26. Junior Employees
27. Junior Employees Certificate
28. Cleaning of Hands
29. Record
30. Clock
31. Breakdown
32. Board of Reference
33. Definitions
34. Apprentices
35. Sick Leave
36. Rest Period and Meal Break
37. Long Service Leave
38. Part-Time Employees
39. Protective Clothing
40. Dirt or Dust Money
41. Compassionate Leave
42. Special Rates and Conditions
43. Provision of Appliances
44. Jury Service
45. First Aid Equipment
46. Location Allowances
47. Maternity Leave
48. Grievance/Dispute Settling Procedure
49. Superannuation
50. Notification of Change
51. Structural Efficiency
52. Training
53. AVTS Pilot—Floor Finishing and Covering

Appendix—Resolution of Disputes Requirements

Schedule "A"—Industries and List of Respondents.

Schedule "B"—Parties to the Award

Appendix—S.49B—Inspection Of Records Requirements

2. Clause 52. Training: Immediately following these clause, insert a new clause, Clause 53.—AVTS Pilot—Floor Finishing and Covering:

53.—AVTS PILOT—FLOOR FINISHING AND COVERING

(1) The rates of pay for the Australian Vocational Training System (AVTS) Pilot Program specified in this clause will apply during the period competency based training arrangements are being trialed in accordance with the terms of the agreed project, ie. three years.

(2) The normal period to be served by participating trainees shall be no less than three years provided that this period may be varied to take into account such appropriate competencies as the trainees may have gained prior to the commencement of the program by way of a system of Recognition of Prior Learning (RPL).

Any RPL system adopted shall use guidelines and criteria as approved by the parties.

(3) The AVTS Floor Finishing and Covering pilot program has been developed to meet the requirements of the Western Australian Floor Finishing and Covering Industry.

Training modules will be selected from the program accredited by the Western Australian Skills Standards Accreditation Board.

Trainees will be required to become competent in all the Broad Based, Core and Specific Skills with the remaining module to be selected from the Additional Specific Skills which form the Western Australian curriculum as varied from time to time.

The nominal time required to complete the course is 888 hours.

(4) The pilot scheme will be monitored by the AVTS Pilot Floor Finishing and Covering Steering Committee, comprising employers, representatives from the Forest Product, Furnishing and Allied Industries Industrial Union of Workers, WA and the Light Manufacturing Industry Training Council (WA) Inc.

The parties agree that the purpose of the pilot is to trial competency based training in the Floor Finishing and Covering area and that variations to the wages or course structure may be necessary during the life of the pilot.

(5) Junior Trainees

(a) The weekly wage rate for junior trainees shall be the undermentioned percentages of the total ordinary weekly wage rate prescribed in this Award for a Furniture Making Employee Group 5.

	In relation to off the job training	% of Furniture making Employee Group 5
On commencement of training		42%
Completion of 328 nominal hours and assessed as competent in practical application of the modules studied	completion of block 4	55%
Completion of further 340 nominal hours and assessed as competent in practical application of the modules studied	completion of block 8	88%
Completion of further 220 nominal hours and assessed as competent in practical application of the modules studied	completion of block 11	100%

(b) Where, due to reasons of module unavailability, a trainee is unable to participate in one or more modules necessary for the completion of a particular block of modules, he or she may still progress to the next pay increment provided that:

(i) He or she has still completed the number of nominal hours necessary for progression to the next incremental leave (or has attained equivalent RPL); and

(ii) Where a trainee completes another module as substitution for an unavailable module, participation in the substitute module is by agreement with the employer; and

(iii) Where an unavailable module is a compulsory module in accordance with the Western Australian curriculum, that module shall be completed by the trainee at the first available opportunity.

(6) Adult Trainees

(a) The weekly wage rate for adult trainees (21 years of age and over) shall be the undermentioned percentages of the total ordinary weekly rate prescribed in this Award for a Furniture Making Employee Group 5.

	In relation to off the job training	% of Furniture making Employee Group 5
On commencement of training		83.5%
Completion of 328 nominal hours and assessed as competent in practical application of the modules studied	completion of block 4	88%
Completion of further 340 nominal hours and assessed as competent in practical application of the modules studied	completion of block 8	93%
Completion of further 220 nominal hours and assessed as competent in practical application of the modules studied	completion of block 11	100%

(b) Where, due to reasons of module unavailability, a trainee is unable to participate in one or more modules necessary for the completion of a particular block of modules, he or she may still progress to the next pay increment provided that:

(i) He or she has still completed the number of nominal hours necessary for progression to the next incremental leave (or has attained equivalent RPL); and

(ii) Where a trainee completes another module as substitution for an unavailable module, participation in the substitute module is by agreement with the employer; and

(iii) Where an unavailable module is a compulsory module in accordance with the Western Australian curriculum, that module shall be completed by the trainee at the first available opportunity.

(7) The following list are those modules which is agreed shall be delivered within the scope of the AVTS pilot program.

Code	Title	Hours
Broad Based		
ABC501	Introduction to Furnishings	8
ABC502	Occupational Health & Safety (1)	8
ABC503	Workplace Environment	8
ABC504	Calculations	24
ABC505	Communication	40
ABC523	Basic Machines (FF&C)	20
ABC525	Introduction to Materials (FF&C)	20
ABC528	Hand Tools and Equipment	20
ABC530	Materials Handling (FF&C)	20
ABC513	Working with Others	20
ABC529	Power Tools & Equipment (FF&C)	20
Core		
ABC541	Occupational Health & Safety (2)	20
ABC842	Sub Floor Preparation (Coatings)	20
ABC546	Customer Relations & Services	20
ABC548	Quality Principles	10
ABC565	Manufacturing Process (FF&C)	20
ABC568	Specification/Plan Reading (FF&C)	30
Specific		
ABC840	Sub Floor Preparation (Hard Underlays)	20
ABC841	Sub Floor Preparation (Sanding)	20
ABC843	Sub Floor Preparation (Levelling)	20
ABC844	Planning and Estimating	20
ABC846	Trims and Accessories	20
ABC847	Woven Carpets Preparation & Installation	60
ABC848	Tufted Carpets Preparation & Installation	60
ABC849	Staircase Preparation & Installation	60
ABC850	Resilient Sheet Installation	60
ABC851	Resilient Tile Installation	40
ABC857	Commercial Carpets	40
ABC858	Foam Backed Carpets	40
ABC860	Resilient Bench and Wall Installation	40
ABC862	Carpet Tile Installation	40
Specific Electives (minimum of 20 hours)		
ABC859	Carpet Care & Maintenance	20
ABC975	Bonded Carpets	40

MEAT INDUSTRY (STATE) AWARD 1980
No. R9 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Action Food Barns (WA) Pty Ltd and Others.

No. 304 of 1997.

Meat Industry (State) Award, 1980.

2 May 1997.

Order.

HAVING heard Mr G.W. Ferguson on behalf of the Applicant and Ms J.L. Dowling on behalf of some of the Respondents and Mr M. J. Darcy on behalf of the remaining Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Meat Industry (State) Award, 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the today's date.

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

Schedule.

1. Clause 9.—Rates of Wages: Delete this clause and insert in lieu the following—

9.—RATES OF WAGES

The following are the minimum rates of wages payable to employees covered by this Award and shall include the third Arbitrated Safety Net Adjustment of $8.00 per week as expressed hereunder.

The rates of pay in this award include the three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Case Decision, the December 1994 State Wage Case Decision and the March 1996 State Wage Case decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the curremt Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The minimum rates of wages set out here under shall be payable for all purposes of the award and operate from the beginning of the first pay period commencing on or after the date of hearing.

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
(1) Adult employees in retail establishments (other than supermarkets)			
(a) First Shopperson—in shop employing two or up to five employees inclusive	378.20	24.00	402.20
(b) First Shopperson—in shop employing more than five employees	382.50	24.00	406.50
(c) General Butcher	375.40	24.00	399.40
(d) Smallgoodsperson	375.40	24.00	399.40
(e) Filler Operator	336.50	24.00	360.50
(f) Linker and Table Hand	336.50	24.00	360.50
(g) Salesperson	351.30	24.00	375.30
(h) Cashier	344.20	24.00	368.20
(i) Wrapper and Packer	335.00	24.00	359.00
(j) Counterhand	335.00	24.00	359.00
(k) Cleaner	326.00	24.00	350.00
(l) When a General Butcher is required by the employer to accept temporary responsibility additional to his/her normal duties he/she shall be paid the rate equal to a First Shopperson as specified in this subclause.			
(2) Adult employees (supermarkets)			
(a) Supermarket Butcher	414.70	24.00	438.70
(b) Wrapper, Packer, Pricer, Cabinet Attendant	355.20	24.00	379.20
(c) Cleaner	326.00	24.00	350.00
(3) Employees in meat auctions, wholesale, contract caterers, prepacking and export processing establishments			
(a) General Butcher	360.50	24.00	384.50
(b) Boner	363.90	24.00	387.90
(c) Slicer	344.50	24.00	368.50
(d) Carcass Pretrimmer	330.50	24.00	354.50
(e) Electric Meat Saw Operator	314.60	24.00	338.60
(f) Meat Lumper (Auction Room)	331.40	24.00	355.40
(g) Filler Operator	324.90	24.00	348.90
(h) Chiller Hand	322.60	24.00	346.60
(i) Strapping or Wiring Machine Operator	314.60	24.00	338.60
(j) Operator of Electric Wizard Knife	314.60	24.00	338.60
(k) Spotter or Quality Control Tester	333.20	24.00	357.20
(l) Employee in Pre-packing section whose work includes pricing	323.60	24.00	347.60
(m) Wrapper and Packer	323.60	24.00	347.60
(n) Carton Room Employee, being an employee who makes up cartons, stockinetts, hessian wraps or polythene or who stencils cartons	314.60	24.00	338.60
(o) General Hand	314.60	24.00	338.60
(4) Employees in saleyards and slaughtering establishments			
(a) (i) Slaughterperson (on rail beef)	378.10	24.00	402.10
(ii) Slaughterperson (on rail mutton chain and dead rail system)	363.90	24.00	387.90
(iii) Slaughterperson (solo)	363.90	24.00	387.90
(b) Crutcher or Dagger	345.70	24.00	369.70
(c) Head Skinner (when not part of slaughtering duties)	336.70	24.00	360.70
(d) Trimmer	330.50	24.00	354.50
(e) Dehorner and Tonguer	330.50	24.00	354.50
(f) Jaw Puller, Head Trimmer and Head Splitter	330.50	24.00	354.50
(g) Head Splitter (Mutton or Goats)	330.50	24.00	354.50
(h) Tally Clerk	329.90	24.00	353.90

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
(i) Viscera Separator	326.70	24.00	350.70
(j) Hide Salter	325.00	24.00	349.00
(k) (i) Skin Shed Hand	320.40	24.00	344.40
(ii) Classer and/or Grader of Skins	388.10	24.00	412.10
(l) Gambrel and Spreader Inserter	324.00	24.00	348.00
(m) Operator of Rumbler Cleaning Roller and Skids	324.00	24.00	348.00
(n) Spray Washer	321.40	24.00	345.40
(o) Weight Recorder	319.70	24.00	343.70
(p) Brander (including labelling of carcasses)	314.60	24.00	338.60
(q) Stockperson or Penner Up	319.90	24.00	343.90
(r) Chiller Hand	322.50	24.00	346.50
(s) Watchperson or Caretaker	314.60	24.00	338.60
(t) Laundry Hand	314.60	24.00	338.60
(u) Canteen Employee	314.60	24.00	338.60
(v) General Hand	314.60	24.00	338.60
(w) Quality Standards Officer (Aus Meat)	333.20	24.00	357.20
(x) Scale System Operator	329.90	24.00	353.90
(y) Grader	333.20	24.00	357.20
(5) Employees in by-products processing establishments—			
(a) Operator of Continuous Rendering Processing Plant	334.50	24.00	358.50
(b) Blood Cooker or Separator Operator	326.30	24.00	350.30
(c) Employee in Condemned Area	326.30	24.00	350.30
(d) Operator of Hasher Washer	314.60	24.00	338.60
(e) By-products Employee not otherwise classified	314.60	24.00	338.60
(6) Drivers of motor vehicles			
(a) Not exceeding 1.2 tonnes capacity	343.10	24.00	367.10
(b) Exceeding 1.2 tonnes and not exceeding 3 tonnes capacity	346.10	24.00	370.10
(c) Exceeding 3 tonnes and under 6 tonnes capacity	349.80	24.00	373.80
For each complete tonne over 5 tonnes capacity 87 cents additional margin, provided that the maximum shall not exceed $13.11.			
(d) Driver of Fork Lift	349.80	24.00	373.80
(e) Driver of articulated vehicle	362.60	24.00	386.60
Exceeding 8 tonnes capacity For each complete additional tonne, 58 cents additional margin, provided that the maximum amount shall not exceed $12.02.			
Drivers of loaded motor vehicles (except tractors) drawing a loaded trailer (not to include a mechanical horse), $1.45 per day extra.			
(f) Driver of Tractor	348.80	24.00	372.80
(7) Employees in freezers			
(a) Freezer Hand (i.e., an employee who is required to work in a temperature between minus 15 degrees Celsius (4 degrees Fahrenheit) and 0 degrees Celsius (32 degrees Fahrenheit)	331.40	24.00	355.40
(b) Employees required to work in a temperature below minus 16 degrees Celsius (4 degrees Fahrenheit) shall be paid $1.45 per day extra; provided that if the temperature is below minus 18 degrees Celsius (0 degrees Fahrenheit), he/she shall be paid $2.80 per day extra; and if the temperature is below minus 23 degrees Celsius (minus 10 degrees Fahrenheit), he/she shall be paid $5.60 per day extra.			
(8) Employees in bacon curing and smallgoods making establishments			
(a) Pork Slaughtering and Breaking Up Sections—			
Slaughterperson	363.90	24.00	387.90
Flair Puller	331.00	24.00	355.00
Scales Clerk	329.60	24.00	353.60
Stockperson and/or Penner Up	320.00	24.00	344.00
Chiller Labourer	322.60	24.00	346.60
Labourer on Slaughter Floor	314.60	24.00	338.60
Boner	363.90	24.00	387.90
Breaking Up Hand	335.40	24.00	359.40
Trimmer	335.40	24.00	359.40
Knife Hand, trimming meat pieces and bones received from the pork breaking up team	335.40	24.00	359.40
Viscera Separator	326.70	24.00	350.70
General Hand	314.60	24.00	338.60
Intrascope Operator	329.90	24.00	353.90
(b) Curing Section—			
Making Pickle and/or Pickle Pumper	335.40	24.00	359.40
Bacon and Ham Turner	323.20	24.00	347.20
Dry Salter	323.20	24.00	347.20
General Hand	314.60	24.00	338.60
(c) Yard Section—			
Yard Hand	314.60	24.00	338.60
(d) Smallgoods Section—			
Smallgoodsmaker	360.50	24.00	384.50
Butcher	360.50	24.00	384.50
Smallgoods Seller from vehicle who collects cash	365.50	24.00	389.50
Boner	363.90	24.00	387.90
Slicer	344.50	24.00	368.50
Rasher Machine Operator	340.20	24.00	364.20
Salter	340.20	24.00	364.20
Cooker	340.20	24.00	364.20
Knife Hand, removing excess fat from meat in the Pressed Meat Cooking Section	335.20	24.00	359.20
Trimming Ham or Bacon pieces or cutting Lard	328.00	24.00	352.00
Packing Room Hand	323.20	24.00	347.20
Despatch	329.90	24.00	353.90

	Base Rate $	Safety Net Adjustment $	Minimum Rate $
Fillerperson	324.90	24.00	348.90
Linker	324.90	24.00	348.90
Operator, Linker Machine	324.90	24.00	348.90
Operator, Knobbing Machine where not attached to filling machine	324.90	24.00	348.90
Operator, Slicing Machine not including rasher machine	324.90	24.00	348.90
Tablehand	324.90	24.00	348.90
General Hand	314.60	24.00	338.60
(e) Canning Section—			
Extract Maker	335.20	24.00	359.20
Copper Hand	323.90	24.00	347.90
Evaporator Operator	323.90	24.00	347.90
Open Copper	323.90	24.00	347.90
Fillerperson	324.70	24.00	348.70
Packer or Canning Hand	323.20	24.00	347.20
General Hand	314.60	24.00	338.60
(f) Miscellaneous Section—			
By-Products Employees operating machinery	314.60	24.00	338.60
Smoke and Drying Room employees	323.20	24.00	347.20
Labourer (cleaning skids, gambrels, rollers and other equipment)	314.60	24.00	338.60
Loader and/or Lumper	331.40	24.00	355.40
Watchperson or Caretaker	314.60	24.00	338.60
Gatekeeper	314.60	24.00	338.60
General Hand	314.60	24.00	338.60
(9) Employees in pet food establishments			
Boner and/or Skinner	360.50	24.00	384.50
Trimmers and/or Slicers	356.90	24.00	380.90
Cutting and/or Mincing Machine Operator	331.10	24.00	355.10
Counterhand	337.40	24.00	361.40
Knife Hand—an employee who may use a knife, shears or scissors to trim dirt or hair or slice meat prior to being weighed	332.70	24.00	356.70
Wrappers or Packers	323.60	24.00	347.60
Strapping or Wire Machine Operator	314.60	24.00	338.60
General Hand	314.60	24.00	338.60
(10) Employees in casing sections or establishments			
General Hand	346.50	24.00	370.50

(11) Apprentices: The minimum weekly wage rate of apprentices shall be based on the percentage of the total wage applicable to a General Butcher, as follows—

(a) Four year term	%
First year	40
Second year	50
Third year	75
Fourth year	95
(b) Three year term	
First year	50
Second year	75
Third year	95

(12) Junior employees (other than those in casing sections, retail establishments including supermarkets or those employed as drivers of motor vehicles) and subject to Clause 25.—Junior Employees—

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a General Hand as defined in subclause (3)(o) of this Clause—

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(12A) Junior employees (Retail Establishments other than supermarkets)—

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a Cleaner as defined in subclause (1)(k) of this Clause—

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(13) Junior employees (Supermarkets)—

Junior employees employed on all or any of the duties of a wrapper/packer/pricer/cabinet attendant, shall be paid as follows—

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

Junior employees employed solely to perform the end of day clean up shall be paid the following percentage of the total wage applicable to a cleaner pursuant to subclause (2)(c) of this clause—

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(14) (a) Junior employees—Drivers of Motor Vehicles

Rates of Pay—(% of wage payable to Adult Employee for capacity of vehicle being driven)

	%
Under 19 years of age	70
Under 20 years of age	80
20 and over years of age	100

(b) No Junior Employee under 17 years of age shall be permitted to have sole charge of a motor vehicle.

(15) Junior Employees—casing section—subject to Clause 25.—Junior Employees—

The minimum weekly rate of wage of juniors shall be based on the percentage of the General Hand rate expressed in subclause (10) of this Clause—

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(16) Adult leading hands

Any employee who is placed in charge for not less than one day of—

Not less than three and not more than ten other employees, shall be paid per week extra, an all purpose rate of $11.50.

More than ten and not more than twenty employees, shall be paid per week extra, an all purpose rate of $17.95.

More than twenty other employees, shall be paid per week extra, an all purpose rate of $23.60.

THE SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS) STATE AWARD 1977 No. R32 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Myer Stores Limited & Others.

No. 448 of 1997.

Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.

COMMISSIONER J F GREGOR.

6 May 1997.

Order.

HAVING heard Mr W Johnston on behalf of the Applicant and Ms C Brown 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 Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29 April 1997.

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

Schedule.

1. Clause 47.—Traineeships—Delete subparagraph (iv) of paragraph (a) of subclause (7) and insert in lieu the following—

(iv) Skill Level B Where the accredited training course and work performed are for the purposes of generating skills which have been defined for work at Skill Level B.

HIGHEST YEAR OF SCHOOLING COMPLETED

School Leaver	Year 10 and below	Year 11	Year 12
	$	$	$
	152.00	183.00	213.00
plus 1 years out of school	183.00	213.00	245.00
plus 2 years	213.00	245.00	287.00
plus 3 years	245.00	287.00	327.00
plus 4 years	287.00	327.00	
plus 5 years	327.00		

WATCHMAKERS' AND JEWELLERS' AWARD 1970 No. 10 of 1970.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Caris the Jeweller and Others.

No. 1433(B) of 1996.

Watchmakers' and Jewellers' Award 1970 No. 10 of 1970.

CHIEF COMMISSIONER W.S. COLEMAN.

28 April 1996.

Order.

HAVING heard Ms J. Freeman on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT the Watchmakers' and Jewellers' Award 1970 be varied in accordance with the following Schedule and in line with the Metal Trades Standard these variations shall have effect from the beginning of the first pay period commencing on or after the 28th day of February 1996.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8.—Wages: Delete the amount of $9.10 in subclause (5) and insert in lieu thereof the amount of $9.70.

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

S.47

Deletion of Respondents

No. 76 of 1980, Parts 29, 55, 92, 151, 152, 162, 164, 174, 175, 177, 178, 179 & 181.

CHIEF COMMISSIONER W.S. COLEMAN.

18 April 1997.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order:

THAT from the date of this order the following employer be struck out of the following awards:

1. Aerated Water and Cordial Manufacturing Industry Award No. 10 of 1975 namely:
   Golden Mile Aerated Water Co. Ltd.
2. Baker's (Country) Award No. R18 of 1977 namely:
   Skyline Cake and Bread Shop
   Sun City Bakery Shop
3. Career Start Traineeship Agreement No. PSA AG 1 of 1993 namely:
   Western Australian Meat Commission
4. Cleaners and Caretakers (Car and Caravan Parks) Award No. 5 of 1975 namely:
   Canterbury Court Pty Ltd
5. Cleaners and Caretakers (Government) Award No. 32 of 1975 namely:
   Western Australian Meat Commission
6. Engine Drivers' (General) Award No. 21A of 1977 namely:
   W.A. Match Co. Pty Ltd.
7. Engine Drivers' (Government) No. 5 of 1983 namely:
   Western Australian Meat Commission
8. Facilities Agreement 1992 PSA AG 2 of 1992 namely:
   Western Australian Meat Commission

9. Jobskills Trainee Agreement PSA AG 2 of 1993 namely:

   Western Australian Meat Commission

10. Motel, Hostel, Service Flats and Boarding House Workers' Award 1976 No. 29 of 1974 namely:

    Bidston Hall Pty Ltd

11. Optical Mechanical Award 1971 No. 9 of 1970 namely:

    A.G. Thompson & Co. (W.A.) Pty Ltd

12. Restaurant, Tearoom and Catering Workers Award, 1979 No. R48 of 1978 namely:

    Double Happy Chinese Restaurant

13. Storemen (Government) Consolidated Award 1979 No. 20 of 1969 namely:

    Western Australian Meat Commission

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

NOTICES—
Award/Agreement matters—

Application No. 1725 of 1996

APPLICATION FOR VARIATION OF AWARD

TITLED "BUILDING TRADES AWARD 1968"

NOTICE is given that an application has been made to the Commission by The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation which relate to area of operation or scope are published hereunder.

1. Replace existing Clause 3.—Scope : with the following—

3.—SCOPE

(1) This award shall apply to all employees (including apprentices) usually employed on, or employed as casual employees on building trades work as defined in Clause 6 Definitions of this Award in any of the callings set out in Clause 10 Wages of this Award and who are employed in the industry of building trades maintenance and building industry products manufacture. The award shall also apply to all employees in any of the callings set out in Clause 10—Wages of this award (including apprentices) employed in any of the industries set out in the schedule attached to this award, and

(2) To all employers employing those workers, but the Award shall not apply—

(a) To a worker covered by the Painters' (Shipping) Award No. 32A of 1961 as amended or replaced from time to time;

(b) to a worker employed in sandblasting or in painting structural steel work in an establishment of an employer bound by the provisions of the Metal Trades (General) Award No.13 of 1965 as amended or replaced from time to time;

(c) to a worker employed on work coming within the scope of any award or industrial agreement in force at the date of this award or to a worker whose conditions of employment are regulated by any such award or industrial agreement;

(d) to a worker, not employed by a painting contractor or by a building contractor or not usually employed as a painter under this award, who is employed on work in which only one coat of paint or any other preparation used for preservative purposes applied;

(e) to a worker who paints petrol oil containers not exceeding fifty gallons capacity; or

(f) to a worker employed by Di-Met (WA) Pty Ltd in painting or applying protective coating in its workshop, to any plant, machinery, object or structure, not being a building or a part, in situ, of a building.

(g) to a worker employed on work coming within the scope of the following awards—

Pipe Tile and Pottery Manufacturing Award No. R34 of 1978

Brick Manufactures Award No. 19 of 1978

Cement Tile Manufacturing Award No. 3 of 1966

2. Clause 6.—Definitions: Add a new subclause (10)—

6 (10) Building Trades work includes—

(i) all work "off-site" in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or other structures of any kind whatsoever undertaken on the premises owned or operated by the employer; or

(ii) all work "off-site" in connection with the production and processing of building products;

(iii) all work which the Union and the employer concerned agree is building trades work but only if the agreement is approved by the Board of Reference; or

(iv) all work which, in default of an agreement as aforesaid, is declared by the Board of Reference to be building trades work.

3. Schedule B—Respondents: Replace the current Schedule B with the following Schedule—

Aged Persons Homes
Aluminium Pre-Fabrication
Breweries
Brick Manufacturers & Distributors
Caterers
Ceiling Board Manufacturers
Cement Manufacturers
Private Colleges
Concrete Tank Builders
Earth Moving Contractors
Estate Developers
Glass Cutting and fitting
Private Hospitals
Hotels
House Repairers & Renovators
Industrial Gas Manufacturers
Insulation Materials Manufacture
Joinery Manufacturers
Local Government Authorities
Machinery Hire Companies
Meat Exporters and Frozen Food Stores
Motor Vehicle Distributors
Retail and Wholesale Distributors
Roofing Contractors
Shop Fronts and Office Fitting Manufacture
Signwriting
Stonemasonry
Swimming Pool Manufacturers and Equipment Suppliers
Ceramic Tile Production and Distribution
Theatres

A copy of the proposed variation may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. CARRIGG,
Registrar.

9 May, 1997.

PUBLIC SERVICE ARBITRATOR— Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department of Productivity and Labour Relations.

No. P4 of 1997.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER J.F.GREGOR.

10 April 1997.

Reasons for Decision.

THE ARBITRATOR: On the 23 January 1997 the Civil Service Association of Western Australia Incorporated (the CSA) applied to the Public Service Arbitrator (the Arbitrator) for a hearing pursuant to Section 80E of the Industrial Relations Act, 1979 (the Act) on the grounds that in dealing with a claim for a temporary special allowance and higher duties allowance by Ms Megan In de Braekt that the Department of Productivity and Labour Relations (DOPLR) had adopted inappropriate processes for determination of the entitlement and eligibility for the payment claimed. The Arbitrator conducted a conference between the parties on the 17 February 1997 and at the conclusion of that conference the matter had not been resolved. It was decided that the dispute would be heard and determined on a date to be fixed. The matters in dispute between the parties were delineated in a schedule to a Memorandum of Matters for Hearing and Determination. The schedule provides as follows—

> *It is claimed by The Civil Service Association that a member, Ms Megan In de Braekt, successfully undertook all tasks and responsibilities associated with the position of Industrial Inspector between the period of 8 August 1994 to 17 November 1995. That work included difficult or complex matters such that she should have been paid the prescribed rate of salary for a Level 4.1 Industrial Inspector for the period 8 August 1994 to 17 November 1995, first between 8 August 1994 to 10 May 1995 a Temporary Special Allowance and between 11 May to 17 November 1995 a Higher Duties Allowance.*
>
> *In addition she seeks an ex gratia payment for what is described as extraneous work and duress caused to her to be calculated as 22 hours x 1.5 x Level 4.1 hourly rate. Orders are also sought that the decision of the Commission be reflected in the employment history of Ms In de Braekt.*
>
> *The Department of Productivity and Labour Relations denies each and all of the claims. It says that proper reviews have been carried out of Ms In de Braekt's claim. No injustice has been done to her and the orders sought by The Civil Service Association should not be granted.*

By Section 80E of the Act the Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a government officer or a group of officers or government officers generally. The jurisdiction conferred includes jurisdiction to deal with a claim in respect of salary, range of salary or title allocated to the office occupied by a government officer and, where a range of salary has been allocated to an office, the particular salary within the range of salary allocated to it. The matters for determination are clearly within the jurisdiction conferred on the Arbitrator by Section 80E of the Act.

The matter was heard on the 20 March 1997. At the beginning of the proceedings Mr Keogh, who appeared for the CSA, advised that it would not pursue that part of the claim which sought an extra gratia payment for what is described in the schedule to the memorandum as 'extraneous work and duress'. No evidence was led concerning that part of the claim and in orders which will issue as a result of this determination that part of the application will be dismissed. The relevant history of the matter is broadly as follows.

In January 1989 the then Public Service Commissioner delegated to departments classification criteria to be used once Reclassification Review Committees had been established. The review committees were to operate on the basis that each was to ensure that equity and relativity within an occupational group is maintained both within the agency and across the service. There were other requirements, however for the purposes of these reasons they do not need to be recited.

In 1994 Industrial Inspectors employed in DOPLR applied for reclassification from Level 3 to Level 4. These employees were all working within the industrial advisory division of the department. The Classification Review Committee (CRC) which had been formed on policies developed after the delegation of reclassification authority by the Public Service Commissioner met and unanimously recommended that the reclassification appeals by the various inspectors not be supported. It also recommended that DOPLR through the CRC consider individual submissions for financial remuneration from the various individuals who were in Industrial Inspector 1 (Level 3 positions) between June 1994 and April 1995 and who were, during that period, required to undertake criminal prosecutions or work falling into a difficult category. It appears that the inspectors were not satisfied with the outcome of the CRC examination of their submissions and appeals were lodged in Application Nos. PSA 196-202 of 1994. The applications came on for hearing before the Arbitrator and were dismissed. A file note issued by the learned Arbitrator (*Exhibit K2*) records the outcome of his considerations and the observation that in his view the proposal of the CRC concerning the difficult work would provide an equitable outcome that would compensate employees who were required to carry out higher level work pending the finalisation of the restructuring process. He recommended that the parties consult for the purpose of developing criteria for identifying those employees who would have an entitlement and the level of allowance to be paid by them.

Although Megan In de Braekt, the officer at the centre of this application, was not one of the officers subject to the classification appeals she nevertheless was of the view that the majority of her work while she had been Inspector was difficult within the definition that had been put forward the CRC recommendation. She claimed a retrospective financial adjustment from 8 August 1994 until 17 November 1995 for the difference between Level 3 and Level 4 Inspector. The CRC accepted the application and considered it. This first occurred on the 1 August 1996. Apparently the decision made by the CRC was that it declined to make a recommendation due to the need for further information. There was a need for an analysis to be done by senior officers to verify some of the issues raised and that the committee had to revisit the definition of difficult work before the claim could be assessed. The committee decided it would undertake this work then reconsider the claim. The attitude of Ms In de Braekt to this was that the submissions made by her were a continuation of the process lodged by the Industrial Inspectors in June 1994, that there should be no doubt about the definition of difficult work because that had been specified in a recommendation by the CRC in October 1995 and it was the same definition which was endorsed and accepted by all parties in the hearing of the reclassification appeal before Arbitrator George. According to Ms In de Braekt she regarded the action of the CRC as an abrogation of the decision of Arbitrator George and expressed concerns about the fairness of the way the process of dealing her claim was then being conducted.

This caused Ms In de Braekt to make another submission and for her to request an opportunity to appear before the CRC. The next relevant event was a meeting between the Acting Director of the Inspectorate and Ms In de Braekt where Ms In de Braekt was told that her work did not meet the Level 4 inspector competency standards and because of that the Acting Director would recommend to the CRC that the claim be rejected. There was another meeting of the CRC on 11 September 1996. There was a recommendation from the Acting Director of the Inspectorate that the claim be rejected in total. The meeting was conducted in the absence of Ms In de Braekt. There was a further meeting on the 2 October 1996 at which time Ms In de Braekt was given the opportunity to speak to a third submission. After she had made her submission she answered two questions and left. According to her she was not

given the opportunity to have a dialogue with members of the committee. Later Ms In de Braekt was told that the committee had decided to offer her the sum of $750 in full and final settlement of the claim as an ex gratia payment. The payment was to cover the 15 month period of the claim. According to Ms In de Braekt there was no explanation as to the origin of the $750 or the factors that been taken into account to determine the quantum, nor was there any opportunity to speak to the CRC about its final recommendation. Later complaints were made to the Deputy Chief Executive Officer about the processes which had been used by the CRC. That completed the action until the matter became the subject of the application currently before the Arbitrator.

Evidence was taken from Megan In de Braekt. She said she had worked in a Level 2 position as a Wage Line Officer for about 5 months. After about one month in that position she started to work with inspectors. She described it as a natural progression and an evolution. She claimed that she dealt with advice to people about Federal and State Industrial laws, their rates of pay, overtime provisions and the like. Eventually she answered an expression of interest to work as a Level 3 Industrial Inspector. She worked in that position which involved dealing with complaints under the Industrial Relations Act, awards, orders and agreements, investigations of breaches and offences, education of the public concerning their entitlements, drafting reports, preparing papers and ministerial answers. When she commenced in the position she was allocated what she described as a huge bundle of files. As it turned out most of the files were complicated in nature. Later she listed the files and the detail of their complications in one of her submissions to the CRC. During her time in the office she worked closely with a number of more senior inspectors. One was John Collier. She spent some time talking to him and other inspectors about the work and shared information on a collegiate basis.

Due to a rise in the number of complaints in there was an internal restructure of the department. In an effort to meet the increase there was a reorganisation of the section into teams. Ms In de Braekt was allocated to the prosecution team. She gave evidence that difficult matters which included criminal prosecutions, management of criminal investigations, investigations involving disputed award, coverage for classification, disputed breaches, unfair dismissal and issues relating to employee/subcontractor were all matters dealt with by her in the majority of the files she handled. She gave evidence about her efforts to obtain additional compensation for the work she was doing. In the recitation in these Reasons I have drawn heavily on her evidence to describe the chain of events and there is no need to repeat it here. She gave evidence about her meeting with the Acting Director of the Inspectorate Ms Cooper, who had told her that she would recommend that her claim would be rejected in total. It seemed strange to Ms In de Braekt that a person who was a member of the committee which would sit in judgement upon her application was making a recommendation to the committee and was able to address it on that recommendation in her absence. Ms In de Braekt gave evidence that she was given a limited opportunity to put her position to the Committee and that not withstanding a promise she thought she was given, she was allocated only 20 minutes to speak. She was not in a position to address the views advanced by Ms Cooper. At the end of her address she was asked two questions. Later she was given feedback on the decision of the CRC. On receipt of that feedback she questioned Ms Devenish, the Human Resources Manager, about how the decision was arrived at. She was very confused with the answers she had received from Ms Devenish. Ms In de Braekt was subject to cross examination by Ms Devenish who appeared for DOPLR however the product of that exercise was a reinforcement of what had been said in examination of chief and I do not intend to recite the evidence in cross examination.

The Commission also heard from Ms Bridgit Green. Before becoming a regional inspector Ms Green had been a senior officer to Ms In de Braekt. Concerning Ms In de Braekt she said the work she undertook was of a very high calibre. She had been handling a large number of files which were detailed and very complex. They were not mundane or everyday files and included such things as disputed award coverage and employer/employee relationships. Ms In de Braekt was a very diligent worker and every investigation she undertook was performed to a high standard. She went to great lengths to ensure that she did her work properly and Ms Green was very impressed with her application. Ms Green had made a performance appraisal of Ms In de Braekt. She had raised with Ms In de Braekt the need to be less over enthusiastic and zealous, that she had a brisk approach to people and this needed to be attended to. Ms Green said Ms In de Braekt took these criticisms well but her strengths and skills outweighed the problems of approach. Ms Green said that Ms In de Braekt undertook work in detail, methodically and presented excellent results. There was some simple files amongst those within Ms In de Braekt's care but there were others which were complex and difficult and she dealt with them well.

Evidence was also taken from John Collier, who is an Industrial Inspector with DOPLR. He gave evidence that he had worked closely with Ms In de Braekt. He told the Commission of the type of work that he did. He gave evidence that the role carried out by Industrial Inspectors were very similar. He remembers speaking with Ms In de Braekt about various different cases and sharing information with her. He gave details of the type of work that many of her files encompassed. On numerous occasions he had spoken to Ms In de Braekt concerning those matters. He gave evidence concerning the thorough approach of Ms In de Braekt to her work. He described her as methodical and meticulous. He gave evidence that on allocation files were not graded in difficulty, it was a lottery to some extent concerning the level of difficulty of each. It was quite possible that most of Ms In de Braekt's files could have been in the difficult category. He had inherited files from her when she left and he described them as complex and difficult. Comprehensive work had been done on the files, there were files notes and it was apparent that Ms In de Braekt had gone to great lengths to try and get the matters resolved. It was Mr Collier's view that most of the work would have fitted into the definition of complex. Under cross examination Mr Collier reiterated his view that Ms In de Braekt had performed her duties well. He was questioned about what would make a matter complex and he identified 10 or so criteria to be applied.

Evidence was also taken from Graham McCorrey. Mr McCorrey is Senior Legislation Officer in DOPLR who has had extensive experience as an Industrial Inspector between the years 1985 to 1994. Mr McCorrey gave evidence concerning the difficulty of files. He said that matters were allocated on the basis of a senior inspector's assessment of the difficulty of a file and the competence of the investigating inspector. The difficulty of a file could not be assessed with great accuracy on allocation. Complexity is often revealed by investigation. He had been involved in the inspectors reclassification appeal and had assessed a number of files on the basis of whether they were routine, complex or hard. He applied 15 criteria in that assessment. He had carried out the same exercise with the files worked on by Ms In de Braekt and which had been incorporated in *Exhibit K7*. He examined them to see whether they were routine, difficult or hard. He classified 60% of the files difficult or hard according to his criteria but over 80% of them were in that category according to the DOPLR's criteria. He had reviewed approximately 45 files out of those which were nominated in the appendix to Ms In de Braekt submission to the CRC. Mr McCorrey said ultimately that the classification 'difficult' could be applied to the majority of work that Ms In de Braekt had done. Mr McCorrey was subject to cross examination by Ms Devenish however propositions he advanced in examination of chief were not disturbed.

On behalf of DOPLR evidence was heard from Ms Janet Cooper who is the Acting Director of the Fair Work Places Division who at the relevant time was the Acting Director of the Education, Services and Industrial Advisory section. Ms Cooper said that as Acting Director of the division and a member of the CRC she assessed the claim in consultation with other managers. She related how Ms In de Braekt had been appointed to the position. She observed that Ms In de Braekt was one of the persons who responded to a call for expressions of interest for the position. Ms In de Braekt was selected primarily as a development opportunity for her. At the time she had been employed in the Department for five months, three of those being part time. Ms In de Braekt was not given a Temporary Special Allowance for the position. Ms

Cooper said it was likely that Ms In de Braekt did perform some Level 4 duties but they were by no means a substantial part of the work. By reference to the job description forms for Level 3 Inspectors, Ms Cooper expressed opinions about the difficulty of investigations undertaken by Ms In de Braekt. To her knowledge Ms In de Braekt had not conducted investigations into breaches of legislation although she may have assisted others who did. Neither did she prepare and present educational talks to community groups and businesses, nor did she assist in the training and supervision of Industrial Inspectors. She may have done some difficult investigations but most of her duties would have bona fide at Level 3. Ms Cooper described the makeup of the CRC. She confirmed that the committee had met on three occasions to discuss the claim and it eventually made an offer of $750 in settlement of Ms In de Braekt to demonstrate the art of compromise. In effect it was a good will offer because there was a recognition that during the transition period there may have been uncertainty and lack of clarity. Ms Cooper observed that over the period of time she had concerns about the communication style and interpersonal skills of Ms In de Braekt and she had raised those with her immediate supervisors.

Ms Cooper was subject to detailed cross examination by Mr Keogh. She observed that the CRC is not a mini tribunal, it is simply a committee charged with the responsibility of looking at claims and making recommendations. This answer was in response to the suggestion by Mr Keogh that there should be natural justice applied to its decision making processes. Ms Cooper did not believe that the fact that she recommended to the committee that the claim be rejected could lead to bias nor did she seek to convince the committee, even though she is a member of it, to accept her views. She did accept though that the committee would have been influenced by her recommendation. This in the context that she had assisted the committee in the consideration of the claim. Even though the assistance was in a form of a suggestion for rejection it was assistance nevertheless. Ms Cooper told Mr Keogh that she knew that the submission by Ms In de Braekt was based upon the recommendations of Arbitrator George. Ms In de Braekt had mentioned the recommendation of Arbitrator George and tied her claim to it but in the committee's view that was not a proper basis. Mr Keogh cross examined Ms Cooper on the policy document in Exhibit K4 and extracted her views concerning the policy. She rejected as pure conjecture that the policy was designed to make sure that a person with a negative view about an application does not become a committee member. Ms Cooper had not consulted with Ms Green, Ms In de Braekt's supervisor, about her but she had discussed the way she performed the work with another senior supervisor, who she did not name, concerning the use of the word difficult and the identification of difficult cases. Ms Cooper observed that considerable weight was put on the so called definition of difficult work and what that would constitute. Her concern as a director of the area was that there was a tendency for the people to consider they should be recompensed based on a very prescriptive analysis of their work. The 'difficult' definition had only been introduced as a guideline and the criteria that were written down were for guideline purposes only. It was never intended that it would be limiting in any way because there are a range of other duties associated with Level 4 work.

The Commission also heard evidence from Mr Gregory Loganscales who is a Senior Industrial Inspector. He had assessed the submission made by Ms In de Braekt to the CRC and wrote a memo supporting her. He did not revisit the individual files that she mentioned, he did not see a need to. Of the level of difficulty in the files Mr Loganscales was of a view that 55%—60% of them would have been in that category but he pointed out that his view of difficult given his length of service might be different to that of a new inspector.

The kernel of this case revolves around whether there was a denial of natural justice. This is argued by Mr Keogh. If his argument is correct a second question arises as to how the CRC should have gone about its tasks.

The concept of natural justice has been described by *Hotop* in *Principles of the Australian Administrative Law 6th Edition, (The Law Book Company, 1985)*, it comprises two common law rules developed to ensure that a fair procedure is used in making decisions effecting the rights or interests of individuals. The rules are well known, the first is the hearing rule which proceeds upon the principle that the decision maker must afford an opportunity to be heard to a person whose interests will be adversely affected by a decision. The second rule is the rule against bias which proceeds upon the principle that a decision maker must be disinterested or unbiased in the matter to be decided. As noted by *Hotop* the rules may be twin but they are not inseparable. The instant matter does not involve the decision of a body which has been created by statute or is exercising statutory powers or which operates under a model. But it is a body which has the powers to effect the rights and interests of employees of DOPLR having conferred on it such powers without statutory prescription or hearing procedures. In situations where there are no hearing procedures prescribed and none have been adopted, the courts in some circumstances, apply a duty on the decision making authority to observe natural justice. That is the situation in the current circumstance. There are established lines of authority which make it clear that the principles of a natural justice apply to the operations of the CRC by the implication principle as it is as described in *Cooper v. Wansworth Board of Works 1863 14 CV (NS180) and see also Hotop (Cases and Materials page 151).*

The question is whether the natural justice principles were applied. Dealing first with the right to hearing it appears that a right to hearing was given but it was limited. There was no opportunity for Ms In de Braekt to address issues which had been raised to her detriment in the recommendation made by Ms Cooper. Although that opportunity was denied it must be acknowledged that a form of hearing was granted. If the matter was to be decided purely on the question of hearing, I have doubts whether there would be sufficient, in the history of this matter, to sustain a challenge to the decision of the CRC based on failure to apply natural justice.

However as I mentioned previously the two basic principles, the right to hearing and the freedom from bias need to be considered together. Concerning this last, the situation is that the composition of a CRC was faulty in that it included as a member a person who provided recommendations to the committee not as a member of the committee but in her role as the Acting Director of the relevant section of DOPLR. Having made a recommendation there can be no doubt that Ms Cooper was in a position to influence the other members. In reality that may or may not have lead to real bias but at least there was a reasonable suspicion or a real likelihood of bias. The test as it is set out in the relevant authorities is not concerned with the reality or even the probability, it is concerned solely with the outward appearance of bias to a reasonable observer. The composition of the management of the CRC and the recommendations provided by one of its members in my view fall within this category. Therefore the rule against a bias has been breached. Taking the conduct of the committee and applying both of the rules it is open to find that there has been a denial of natural justice. I so find. In the orders I issue I will make void ab initio the decision of the CRC relating to the claim by Ms In de Braekt. I emphasise that this finding should not be taken to mean that the CRC did act with actual bias or acted in any way other than good faith. There is no evidence which would support such a conclusion.

The process should be started from commencement. A CRC to deal with matter should be established to ensure that its members are able to bring independent view to the issues put before them. The CRC in reviewing the claim by Ms In de Braekt should also take into account the evidence of Ms Green, Mr Collier and Mr McCorrey concerning the difficulty of the work undertaken by Ms In de Braekt and by reviewing the files mentioned in the first submission make its own findings about the difficulty of those cases based upon the following analysis of the recommendation of the Arbitrator in appeals PSA 196—202 of 1994.

In my consideration of the recommendation of the Arbitrator in disposing of appeal Nos. PSA 196-202 of 1994, I have examined the files and in particular the statements submitted on behalf of the Respondent which included the report from the Acting Director, Education Services and Industrial Advisory Division to the CRC dated 6 October 1995 and the report of the CRC to the Chief Executive Officer dated 30 October 1995. When read in conjunction with the Arbitrators decision of 7 February 1996, it is clear that the recommendation related to the fact that between late 1992 and March 1995 a number of

reports were prepared on the structure of the Industrial Advisory and Inspection Branch. It was recognised at that time, as acknowledged in the Report from the Acting Director Education Services and Industrial Advisory Division dated 6 October 1995 that "... work existed in the branch that was at a higher level than the current classification provided for, however the majority was at the Level 3 range. Three Level 4 positions were created to accommodate the difficult work and to facilitate the development of a career path." (Page 1 of report). In the conclusion to that report it was noted that "The recent restructuring which occurred in the Industrial Advisory and Inspection Service Branch was predicated on the following grounds—

- the need to provide a career structure within the branch to offer more opportunities to existing staff and attract new staff.
- the need to address the fact that there is a varying range of complexity of tasks within the branch and the ability to allocate work according to complexity, required a range of levels of officers." (Page 5 of report)

It is apparent that the concern of the Arbitrator was that it had been recognised that there was work within the Branch which warranted a Level 4 classification. This was addressed through the new structure which was approved in April 1995, but only after a protracted period of consideration during which some officers were performing the higher level work. The records shows that the appeals, which were lodged on 30 June 1994, were held in abeyance while the restructure was being finalised. It is clear that the Arbitrator was of the view that the proposal of the CRC provided equitable consideration of the circumstances in recommending that "I therefore recommend that the parties consult for the purpose of determining criteria for identifying those employees who would have an entitlement under this proposal and the level of allowance to be paid. The Commission is available to assist the parties in the process if necessary." (Decision of the Public Service Arbitrator dated 7 February 1996.)

In the context of this background the obvious place for the parties to commence in giving effect to the Arbitrators recommendation is recommendation 2 of the report of the CRC to the Chief Executive Officer dated 30 October 1995 and the "Summary of Reasons for Recommendation 2" at page 1 of that report.

For the convenience of the parties I incorporate Recommendation 2 and the summary of reasons for recommendation—

Recommendation 2

The Committee unanimously recommended that the Department (through the CRC) consider individual submissions for financial remuneration from appellants who were in Industrial Inspector 1 (Level (3) positions between the date of appeal (30 June 1994) and date of implementation of the new structure (21 April 1995)), and were required to undertake criminal prosecutions or undertake work falling into the difficult category during that time.

Summary of reasons for Recommendation 2

The Committee accepted that there were varying levels of complexity of work performed within the Inspectorate and that this was recognised and Level 4 positions created as a part of the new structure. It considered that if individuals in Industrial Inspector (Level 3) positions were required to undertake difficult matters between the date of appeal and date of new structure, then the Department should consider retrospective financial adjustment to Level 4 for those individuals. The officer would need to demonstrate that the majority of the work was "difficult". Difficult matters include criminal prosecutions, management of criminal investigations, investigations involving disputed award coverage/classification, disputed breaches, unclear evidence or an issue of employee/subcontractor.

In its deliberations the committee should, as part of the process of the consideration, bear in mind that it is legitimate for it to take into account the relative inexperience of Ms In de Braekt before she was allocated work which may fall within the category of difficult as is set out in the Summary of reasons for Recommendation 2.

In summary, I will order that the decision of the CRC be void ab initio, that the CRC should be re-established with membership based upon the criteria set out in the 1989 directive. None of the members of the committee should be involved in making recommendations to it about disposition of the claim. The CRC should carry out its review ensuring that the requirements of natural justice as they have been described in these reasons are met and applying recommendations of Public Service Arbitrator in disposing of appeal No. PSA 196—202 of 1994 as has been analysed here. Finally that part of the claim seeking what amounts to damages for 'extraneous work and duress' will be dismissed for want of prosecution.

Appearances: Mr M Keogh appeared on behalf of the Civil Service Association.

Ms R Devenish appeared on behalf of the Department of Productivity and Labour Relations.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department of Productivity and Labour Relations.

No. P4 of 1997.

PUBLIC SERVICE ARBITRATOR J.F.GREGOR.

5 May 1997.

Order.

HAVING heard Mr M Keogh on behalf of the applicant and Ms L Devenish on behalf of the respondent, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

1. THAT the recommendation of the Classification Review Committee made on or about 4 October 1996 disposing of claims made by Megan in de Braekt is void ab initio.
2. THAT the Classification Review Committee be reconstituted and deal with the claim by Megan In de Braekt as described in the Reasons for Decision in this matter issued on 10 April 1997.
3. THAT part of the claim seeking compensation for extraneous work and duress be and is hereby dismissed.

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

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Castledine

and

Modern Joinery.

No. 156 of 1997.

21 April 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings as edited by the Commission)

COMMISSIONER A.R. BEECH: The Commission has before it an application by Mr Brian Castledine that he was unfairly dismissed by Modern Joinery. When the matter was heard there

was not an appearance on behalf of the respondent. The record of this matter shows that Mr Castledine filed this application on 24th January 1997 and served it on the respondent on the 30th January. A conference in this matter was held on the 13th March. The respondent was advised of the conference by letter of the 18th February. On that day the respondent did not attend the Commission although the date of the conference had been discussed with Mr Basso and agreed with him. The Commission then contacted Mr Basso at the premises of the respondent and he participated in the conference via telephone. No agreement was able to be reached and the matter was set down for hearing today. The notice of hearing was sent to the respondent on the 17th March. No contact has been received by the Commission from the respondent.

Section 27(1)(d) of the Act permits the Commission to proceed to hear and determine a matter in the absence of a party who has been duly served with a notice of the proceedings. That is the case here and in the circumstances I proceeded to hear and determine Mr Castledine's application in the absence of the respondent.

In giving consideration to this matter I have had to consider the question of the identity of the respondent. I have raised with Mr Castledine that I am not sure of the legal identity of the employer. Mr Castledine might recall that when he filled out Form 1 it does say that the full and correct name of the person, firm or company must be given. I am satisfied that a business exists by the name of Modern Joinery because of the evidence of Mr Castledine himself and the evidence of a pay slip with that name on it. It does seem to me that a reasonable person seeing the document and hearing the evidence would take it as being directed to the business that is carried on under that name at the address that has been given. It therefore seems likely to me that at best the naming of Modern Joinery may be a misdescription that ought not be fatal to the claim. On that basis, and in the absence of any other evidence before me, the claim will proceed and the respondent will be as cited, Modern Joinery.

The only evidence that I have before me is the evidence of Mr Castledine himself. His evidence is uncontested in the sense that it has not been challenged under cross examination but I have no reason to disbelieve his evidence. It appears to me to be credible and although he may have been hesitant in relation to some of his answers, I think that is merely due to his unfamiliarity with the surroundings rather than anything else. I therefore accept that Mr Castledine was employed by Modern Joinery for a period slightly over 12 months, that he did not have any warnings about any poor work performance on his part and indeed that in August 1996 he received a pay rise. On the evidence that he has given to me in relation to that, it is open to me to find that the pay rise that was given to him was, as he thinks, because he had been working hard lately.

However, once again on Mr Castledine's evidence, on 16th January this year he was dismissed and indeed finished employment on that day, apparently because of some dissatisfaction with his work. On the evidence before me there was no reason for terminating Mr Castledine's employment.

He states that he worked as hard as he could and was not slacking off, as he put it. On the evidence therefore his dismissal was unfair. Indeed, it is open on the evidence for the Commission to conclude that Modern Joinery dismissed Mr Castledine once it was aware that he had injured his back. In the absence of the respondent, I am not prepared to draw that conclusion categorically but it seems that it is open on the evidence for the Commission to find that. It goes without saying that an employee should not be dismissed for such a reason and if that was the reason then the Commission would ensure that the appropriate remedy would be given.

In this matter, although Mr Castledine originally claimed reinstatement, and indeed it is for the commission to award reinstatement as the primary remedy for an unfair dismissal, I am satisfied from what he said that when he made the application he was unemployed. He has since, through his own efforts, found alternative employment. I take it from his evidence that he would prefer to work at his alternative employment than return to Modern Joinery and on that basis, in the circumstances, I am prepared to find that it would be impracticable to order reinstatement. On that basis, I am prepared to award compensation.

Mr Castledine has stated that the compensation that he is seeking is to be paid for the period between his dismissal and his commencing the alternative employment that he has found. In my view, the claim is relatively modest, if I might say that. However, it does seem to me that the Commission in awarding compensation is quite able to take into account as a reasonable basis for fixing compensation any period of unemployment experienced by the employee as a consequence of the dismissal which occurred. That is not to say that in any particular case the length of the period of unemployment is of itself conclusive. However, in these circumstances, I am quite satisfied that Mr Castledine did the right thing in the sense that he actively sought alternative employment and indeed it is to his credit that he found alternative employment in the manner that he did.

It seems to me therefore that it is a proper exercise of the Commission's discretion to award Mr Castledine the compensation that he claims; that is, the Commission will award compensation for the unfair dismissal which occurred on 16th January 1997 and that compensation will be assessed as the wages Mr Castledine would have earned between the date of his dismissal and the date that he found alternative employment. That is a period of five weeks' wages.

After issuing these Reasons at the conclusion of the hearing I determined that the compensation was calculated as five times the wage cited by Mr Castledine in his application. That wage is $552.00. However it subsequently appears that the wage cited by him is his fortnightly wage. The correct calculation would be five times $276.00. Accordingly the amount of compensation awarded will be $1380.00. A minute of the proposed order now issues to that effect. Should either party query the calculation they should contact the Commission by 30th April 1997. If nothing is heard from either party by that date then the order of the Commission will issue in the form of the minutes.

Appearances: Mr B. Castledine on behalf of himself as the applicant.

No appearance on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Castledine

and

Modern Joinery.

No. 156 of 1997.

2 May 1997.

Order.

HAVING HEARD Mr B. Castledine on his own behalf as the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby—

A. DECLARES that Mr Brian Castledine was unfairly dismissed by Modern Joinery on the 16th day of January 1997;

B. ORDERS that Modern Joinery forthwith pay to Mr Brian Castledine the sum of $1,380.00 as compensation for that dismissal.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Correne Rochelle English

and

Ritz Jewellers Pty Ltd.

No. 18 of 1997.

COMMISSIONER J.F.GREGOR.

22 April 1997.

Reasons for Decision.

THE COMMISSIONER: On 3 January 1997, Correne Rochelle English (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 she had been unfairly dismissed from an employment contract with the House of Gold Jewellers. The application incorrectly identified the employer and during the hearing which took place on 1 April 1997, by consent, the identification of the employer was varied to Ritz Jewellers Pty Ltd (the respondent).

The employment contract had commenced on or about 16 September 1996, when after discussions with Andre Rogala, a principal of the respondent, the applicant was offered a position. There is an allegation by the applicant that the relationship was the subject of an agreement between the respondent and the Commonwealth Employment Service for a wage subsidy under the Job Start Scheme. However, during the course of hearing the respondent's counsel advised the Commission no such agreement was ever executed even though application forms may have been completed. In the event, whether the position was subject to a Job Start agreement or not, does not effect the matters for adjudication here because the jurisdiction of this Commission is to determine whether the dismissal was harsh, oppressive or unfair.

The applicant was employed as a sales assistant. She said that she worked along quite well until some time in December when she found she had been underpaid. When she raised the issue she was told by Mr Rogala that he would fix the problem. He did not in the time promised and she asked again about her backpay. According to the applicant the Mr Rogala became aggressive over the phone. Later she was intimidated and humiliated by Mr Michael Bench, the General Manager of the respondent, in an attempt to get her to resign. During a meeting on 24 December 1996 she had told him that she would not resign and he dismissed her.

Ms English gave evidence on her own behalf. She said that leading up to Christmas, employees at the Spearwood shop run, were having difficulty with the rules the new General Manager, Michael Bench, had introduced. Only the applicant and Tanya Mabbott were 'old staff' and knew the routine in the jewellery store. The applicant perceived that Michael Bench spoke differently towards her than to other staff and she found this upsetting. She had no problems with anyone else who worked at the store from the time she commenced in September 1996, until the time she was dismissed. The staff had been told by Mr Bench that Monday, 23 December 1996, would be a twelve hour day. The applicant thought that when she had received her pay cheque she would be able to cash it and take time to do Christmas shopping. In the event the cheque was delivered late. When she received it she realised she had not been paid her full wage as had been promised by Mr Rogala and this upset her greatly. She told Tanya Mabbott that she would cash the cheque, do some private business and Christmas shopping because she had been waiting all the week for her pay. She had the impression that Ms Mabbott thought that would be fine. The applicant says that her understanding was that Ms Mabbott gave her permission for her to shop. When she returned Mr Bench seemed surprised that she had done Christmas shopping and he was disturbed when she then told him she had not had her lunch break. Later she felt that he was watching her and this made her uncomfortable.

Later that day the staff were told to come in early because the next day, Christmas Eve, would be a very busy day. When she arrived for work on the 24 December 1996 she was immediately asked to go to the back of the store. Mr Bench then told her that he had proof that she had three hours off work and he was not impressed. The applicant told Mr Bench that she had been in contact with Wageline and knew she was allowed to have time off during a 12 hour day. She found his comments to be harassing and she felt humiliated because the conversation took place in the presence of Ms Mabbott who is the Junior Manageress. Additionally, the applicant had no confidence that Ms Mabbott would stand by her. She was confused and asked Mr Bench whether he had a problem with her. In response he brought up a number of warnings. He also said a customer complained about her and she asked for evidence of that. She also asked him if there was any other problem with her performance. He had continued to say that her attitude was bad and so was her work performance. From her point of view this was wrong because she had sold a lot of jewellery the day before and she did not consider that there were any problems with a customer. She felt she was backed into a corner to force her to leave. She eventually told Mr Bench she was not feeling well and she wanted to clear her head because she felt confused. She said that she had a migraine headache and was going to leave the store and get a doctors certificate. So she walked out of the back room. Mr Bench had quietly said to her that she should leave and not come back. She again found this harassing and so she said she would not leave before 9.00am in the morning. Mr Bench then said if that was her attitude she was dismissed. Later she contacted Mr Rogala and told him that she had been fired. She thought that Mr Rogala was the only one with the power to hire and fire but he did not say that Mr Bench could not fire her. She went into a management office of the shopping centre and asked to persons there to note her distressed condition.

In support of her case the applicant called Ms Norma Isobel Love who offered the opinion that she thought Mr Bench was an authoritative person. She also advanced opinions about what she thought some of the other staff thought about Mr Bench. She said that Andre Rogala had told her that he thought the applicant was a fantastic staff member. Under cross examination she also gave evidence that she only worked at the store on three occasions and that she had been dismissed on 7 January 1997.

The Commission heard evidence on behalf of the respondent from two witnesses, Michael Bench and Tanya Mabbott. In his evidence Mr Bench who is the General Manager of the store related that he commenced working at the store in the last week of September 1996 and had spent some time observing the staff. He told the Commission that each member of staff was given a detailed list of behaviour that he expected. This is a normal procedure in a retail outlet. He made it clear that he expected customers come first and be dealt with politely. There were other criteria as well. Employees had to work well together to make sure the displays were clean, in order and laid out by a specific time in each day. He thought the applicant's general attitude to her job in these respects was below what could be reasonably expected and he found her obstructive. He had given her instructions to lay out goods by a certain time but she chose to lay them out on her own timetable. He related a specific instance when this had happened. He had made it clear he was unhappy with her behaviour and that continuation of it could not be tolerated. He asked the applicant to be careful to make sure that instructions were followed. He regarded the exchange as a verbal warning which he followed up with a written confirmation (*Exhibit M1*). He issued the warning because he had given instructions that stock was to be out before 9.15am so it would be ready for 10.00am. When he checked he found that the applicant had not carried out the instruction because she was making a birthday card. This meant to him that he was unable or unwilling to look after customers correctly and put a non business activity before her duties.

There followed another incident where the applicant had failed to advise that she would not be appearing for work. After she had phoned in sick on the Friday afternoon, he tried to contact her. He was of the view that if someone was sick they would likely to be at home, but he could not make any contact at the applicant's home number. He tried again on the following Saturday and again was unsuccessful. The applicant did not report for work on that morning. He tried to contact her through her mother but she did not know where she was. This all occurred at an extremely busy time for the shop. He was unsure whether the applicant would come in on Monday

and he tried to contact her again on the Sunday but there was no answer. This obliged him to organise replacement staff because he could not rely on her to turn up. When the applicant returned to work on Tuesday, 17 December 1996, he took her aside and explained to her the repercussions of her failure to be available for work. The applicant produced a doctors certificate for a period ending 16 December 1996. Mr Bench says he clearly pointed out there was a need for information about availability because it was a busy trading period. A second verbal warning was given which was later committed to writing (*Exhibit M2*).

Mr Bench said the initial response by the applicant to the warning was that she wanted to contact Mr Rogala, but he told her that he was the General Manager and she was answerable to him. He had told her that she did not fulfil the basic criteria of having a good attitude in the shop and dealing with customers. Over the previous 2-3 weeks he had seen her going downhill insofar as her attitude was concerned. On 23 December the shop was very busy. The applicant kept disappearing off the shop floor with no notification where she was going. He was unhappy about the situation because he had informed the applicant on the previous day that she should let someone know if she intended leaving her workplace. On 24 December he took the applicant into the back room of the shop with Ms Mabbott as a witness. He told her that a customer had phoned to make a verbal complaint. He had asked the customer to put the complaint in writing. The customer had done so (see *Exhibit M3*). Mr Bench told the applicant that he was going to issue a written warning. He explained to her the matters subject to the warning were that a customer had complained and that her absence from the shop floor had been unacceptable. It seemed to Mr Bench that when he tried to raise the customer complaint with the applicant that she was not interested in the substance of it at all, she just wanted to know who the customer was. He did not think it appropriate to reveal that name at that stage but he told the applicant the complaint was that she was rude and distant and did not respond to a greeting. He also raised the issue of her absence from the store. He asked for an explanation of her 3 hour absence. She responded that she was allowed a one hour lunch break and 45 minute break. He agreed with that but asked her why she took three hours as well. There was also an issue raised about wages. He told her he could not deal with that. She then said to him she was going home sick because she had a very bad migraine. He did not believe her and he thought that she was lying about the headache. She told him she was going to leave the shop and return with a doctors certificate. He had then said to her that if she left he would take that as her resignation. All this occurred on the busiest day of the year for business. When he told the applicant he would accept her resignation she said that she would stay until 9.00am. He did not understand why, but at 9.00am she left.

The respondent also called evidence from Ms Tanya Helen Mabbott who told the Commission that she worked along well with the applicant until two weeks before Christmas. Then there was a falling out. Mr Bench had issued an instruction to the applicant and Ms Mabbott. Ms Mabbott said the instruction was justified but after that incident the applicant did not like him any more. Ms Mabbott advanced the view that the applicant basically hated him. Ms Mabbott said the applicant became unbearable to work with. If she asked the applicant to do something she would do the total opposite. It created an unbearable working situation. On 24 December 1996, Ms Mabbott remembered going to work at 8.30am. The applicant did not turn up until 8.45am. Once the shop had been set, up Mr Bench asked if he could see them both about a customer complaint that the applicant had been impolite. Mr Bench said he just wanted to talk about the complaint but the applicant had said that she wanted to know who was complaining so she could fix it. Eventually she said she was feeling sick and was going to go home. Mr Bench had asked her why and she had replied, using some fruity language. Ms Mabbott had thought that during conversation the applicant was very angry but did not seem to be suffering any disability. Ms Mabbott's attitude to the applicant's statement about her headache was it was a 'lot of rubbish'. She also gave evidence the applicant was off the shop floor for a number of hours leading up to Christmas. In particular on 23 December, she was away for three hours and had not asked permission to go. In fact she never asked if she could have permission any of the occasions she absented herself.

I need to make some observations on the law to be applied. Mr MacDonald, of Counsel, who appeared for the respondent raised the question of the onus as is flows from Section 23AA of the Act. By that section the respondent is required to establish

> *'there is ground or grounds on which the Commission could find the dismissal was justified'.*

This means that a dismissal is justified if there was a valid reason or were valid reasons connected with the employees capacity or conduct or, based on the operational requirements of the undertaking establishment or service, for the dismissal. The Act does not require that the employer act upon grounds which are justifiable but the employer establish that there is, or are, grounds on which the dismissal could be justified, whether or not the employer acted on those grounds. Therefore the Act requires that only the employer prove on the balance of probabilities, the possible existence of justifiable grounds for dismissal, not the actual existence of those grounds.

On the basis of what has been put in these proceedings, there is no doubt that the respondent had a genuine belief that it's business would suffer if it continued to employ the applicant. Those circumstances would have provided a valid reason for termination and therefore the obligation placed on the respondent by Section 23AA of the Act has been met (*Melissa Jaggard v. Tranby (1996) 76 WAIG 4720).*

Having made this preliminary finding the question is whether the respondent has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1995) 65 WAIG 385*. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz (1991) 71 WAIG 891 and also Byrne v. Australian Airlines (1995) 65 IR 32*). In *Shire of Esperance v. Mouritz,* Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

I turn now to consider the witness evidence. I have had the opportunity of hearing evidence from the applicant on her own behalf and from her witness Ms Love. I have also heard from Mr Bench and Ms Mabbott. The applicant was unrepresented in proceedings before the Commission and had some difficulty with the procedure. The Commission did offer her such assistance as it could. One such occasion was when she declined to cross examine Mr Bench and left all of his evidence unchallenged. The applicant said that she would not ask Mr Bench any questions even though she was told that if she did not challenge his evidence that is a strong indicator to the Commission that it should take his evidence as being the truth. There is an apparent concession by the applicant that she had no challenge to the evidence of Mr Bench, however I choose not to accept the concession because I am sure that the applicant does not know the implications of it. I have had the opportunity of observing each of the witnesses. The evidence given by the applicant is not corroborated by that of Ms Love at all. Ms Love is a person who was dismissed from the employ of the respondent soon after the applicant. But even if her evidence is untainted by that she was only present on two or three occasions at the store and gave no direct evidence at all about the matters at issue in this case. On the otherhand I have heard the evidence of Mr Bench. This evidence is corroborated to a large extent by that of Ms Mabbott. I have no reason to conclude that Mr Bench is not a witness of truth. I say the same about Ms Mabbott and therefore where the evidence of the applicant conflicts with the evidence given on behalf of the respondent by Mr Bench and Ms Mabbott, I favour the evidence of the respondent.

I think that on the balance of probabilities what occurred was that there was, early in the employment contract, a reasonable working relationship in the shop. Mr Bench as a new manager wanted the retail approach of the shop to be in accordance with his wishes and there was a conflict between the applicant and him when he insisted that this occur. It is Mr Bench's right to have the business run in the way he thinks appropriate and it is for the applicant to execute the instructions which are lawfully given to her by the employer. She was not asked to do anything which was inappropriate. She was asked to follow a specific routine in the mornings which on the evidence she did not. She also absented herself without reasonable explanation from the floor of the shop contrary to instructions. She gave no explanation at all as to why she was uncontactable for a period of three days during the most busy time of the year for the business. Mr Bench, as a General Manager, had every right to be apprehensive about the probability that she would not present for work on the following Monday. When she did present for work she had no reasonable explanation about what she had been doing and why she had been absent. Certainly a warning was appropriate in the circumstances. This is not a case where no warnings have been given. There is documentary evidence of two justifiable warnings and the applicant was dismissed during a conversation which would have lead to her getting a third warning if she had not opted to indicate she was leaving because of a sudden onset migraine headache. In the circumstances it was reasonable for Mr Bench to conclude that it was likely a fabrication that the applicant was suffering in the way she said she was. This is supported by the opinion of Ms Mabbott concerning her physical condition at the time.

In all the circumstances there has not been unfairness in the dismissal of the applicant. There is no grounds to conclude that the employer has abused the right to dismiss as it is described in the *Undercliff* case nor has there been any procedural failure in the way the dismissal was executed. This application will be dismissed.

Appearances: Ms C English appeared on her own behalf.

Mr M MacDonald, of Counsel, instructed by MacDonald Rudder, appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Correne R English

and

House of Gold Jewellers.

No. 18 of 1997.

COMMISSIONER J F GREGOR.

22 April 1997.

Order.

HAVING heard Ms Correne Rochelle English on her own behalf and Mr M MacDonald, of counsel, on behalf of the respondent, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders:

THAT the application be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tennille Glavinas

and

Supa Value.

No. 692 of 1997.

COMMISSIONER R.N. GEORGE.

8 May 1997.

Order.

WHEREAS by this Application the Applicant claims 6 months wages as compensation for alleged unfair dismissal; and

WHEREAS re-instatement is not considered by the Applicant to be practicable because she does not wish to work with an employer who she considers to be acting in a discriminating manner; and

WHEREAS the undisputed facts as confirmed in conference before the Commission are that—

- the Applicant commenced work with the Respondent on 9 February 1997 as a Junior Shop Assistant;
- on her commencement the Respondent noted that the Applicant was wearing a small stud in her nose;
- the Respondent had not noticed the stud when the Applicant was interviewed and given employment but as he assumed that the Applicant would have been wearing it at the time and it was relatively unnoticeable he did not raise any objection;
- some time later in her employment the Applicant presented for work with the small stud replaced by a larger and very noticeable ring;
- this was considered by the Respondent to be unacceptable in the context of the Applicant's position which involved customer contact and the standard of presentation required as a consequence;
- in the circumstances the Applicant was directed to remove the larger ring which she did and replaced it with the smaller stud;
- on 24 March 1997 the Applicant attended for work again wearing a large ring in her nose and further, a stud below her bottom lip;
- at about 8.45am on 24 March 1997 the Respondent spoke to the Applicant and directed that the stud below her bottom lip would have to be removed while she was at work;
- at approximately 3.00pm the Applicant approached the Respondent and informed him that she would not comply with his direction;
- in view of the Applicant's response the Respondent advised her that if she refused to remove the stud he would have no option but to give her one weeks notice of termination;
- at about 4.30pm on 24 March 1997, approximately one hour before her normal finishing time, the Applicant abandoned her employment and did not return

; and

WHEREAS the Applicant claims that the actions of the employer were unfair in that it was not made known to her at interview that body piercing of the type objected to by the Respondent was unacceptable for the position concerned; and

WHEREAS in the course of the Conference proceedings the Respondent agreed on the suggestion of the Commission to consider her re-employment if she undertook not to wear the studs or rings objected to; and

WHEREAS that option was rejected by the Applicant; and

WHEREAS on the facts before it the Commission concluded that the Respondent had not acted unfairly and that the Applicant's failure to comply with what were reasonable directions in the context of her employment together with the rejection of the further opportunity afforded to her in Conference proceedings to redeem the situation demonstrated an attitude inconsistent with her obligations under her contract of employment; and

WHEREAS in all of the circumstances the Commission formed the view that the claim was vexatious and a misuse of the rights afforded by S.29 of the Industrial Relations Act, 1979.

NOW THEREFORE the Commission having regard for S.26 and pursuant to the powers conferred on it by Section 27(1)(a) of the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Daniel Goodings

and

Bestbar Pty Ltd.

No. 1599 of 1996.

COMMISSIONER C.B. PARKS.

6 May 1997.

Reasons for Decision.

In his application before the Commission Mr Goodings describes the nature of the respondent's business to be the "importation, cutting, bending and supply of reinforcing rod to the building industry" and that appears to encapsulate what may be reasonably inferred from the evidence. On 15 August 1996 the applicant was engaged by the respondent to drive a truck owned by the respondent and deliver prepared steel reinforcing to building or construction locations notified by customers of the respondent. The duties of the applicant also included unloading steel reinforcing from the truck by means of a crane attached thereto.

Mr Goodings commenced employment on the basis he would work for the respondent, as and when required by the respondent. He was to be paid at an hourly rate for each hour that he worked, that rate being first set and then increased to $13.00 per hour. Both parties described the nature of the employment relationship as being "casual".

Mr Goodings last worked for the respondent on 18 October 1996 and he asserts that he was unfairly dismissed by Bradley Steven Johnston, the Operations Manager for the respondent, by telephone when at home on 24 October 1996. It is denied that the applicant was dismissed on that date, or at all. The respondent asserts that it hadsimply informed the applicant that his services would not be required from 24 October 1996, meaning for the immediate future, in accordance with the right to call upon Mr Goodings to work as and when required.

The term "casual" has no single meaning in law and is often used to describe an employment relationship that involves intermittent work by the employee from day to day, or work over a longer period but which is temporary, or a combination of both. Although it was not expressly put to the Commission, the submissions made by Mr Grant Johnston, the General Manager and a Director of the respondent company, together with his questioning of Mr Goodings, indicate that the respondent viewed the employment relationship with the applicant as one in which the respondent had no ongoing obligation to provide Mr Goodings with work. According to the respondent, Mr Goodings, having been designated "casual", and having agreed to work as and when required, allowed the company to either call upon, or not call upon, the services of Mr Goodings at whatever intervals it saw fit and hence the work provided was not on set days of the week or on set hours any day. Inferentially, a series of separate engagements.

According to Mr Goodings, as an incidence of being "casual", he was to work 15 hours per week and was also advised that there was potential for his employment to become "permanent". Counsel for Mr Goodings led him to testify that his hours of work were however to be subject to the requirements of the respondent. The documentary evidence (exhibit 1) reveals that Mr Goodings did not work 15 hours in any week he had been employed but worked hours ranging from 13.75 hours to 45 hours in the completed weeks and 12.25 hours in the part week he last worked for the respondent. In most weeks Mr Goodings worked substantially more than 15 hours. There is no denial from the respondent that the subject of 15 hours was mentioned at the engagement of the applicant and I therefore conclude that there was mention of it. Mr Goodings has not however suggested that his contract of employment guaranteed him 15 hours work each week as part of a continuing employment contract from week to week. Had he viewed the relationship in that way I would have expected him to have challenged the conduct of the respondent in relation to the second week and the last week of his employment when he worked for, and was paid for, less than 15 hours. No claim has been made that the respondent failed to comply with a term of contract of employment on that count. Hence I think it unlikely that the mention of 15 hours work was made as a guarantee of that amount of work from week to week under an ongoing contract of employment. I think it most likely that the mention was made to suggest the probable minimum of what may be made available to the applicant. There is a strong indication that Mr Goodings may have been subject to series of engagements and if that were so no matter of dismissal arose. However, there was no concerted focus upon establishing the precise terms of employment and providing an analysis thereof. Given that circumstance I do not think I can safely conclude there had been a series of separate engagements. The alternative is that the parties had an ongoing employment relationship over consecutive weeks. A break in the continuity of that engagement was notified to Mr Goodings on 24 October 1996 and in the present context it is that which constitutes the dismissal. I further deal with this matter on that basis.

The application by Mr Goodings, at particular (10), asserts that his employment was covered by the "Transport Workers" Award. No attempt was made to establish that the employment relationship had been covered by an award and whether that had any relevant effect thereon, although given the industry in which the company is engaged I doubt that such could have been established. However, significantly Mr Goodings had been satisfied that his hourly rate of pay exceeded what he believed was the award prescribed entitlement for a casual employee. I believe that Mr Goodings understood his hourly rate of pay compensated for the casual nature of the employment, and was therefore higher than he would have expected to receive had he been engaged to perform the same duties over regular hours per week, under a continuing and indefinite arrangement, or "permanent" employment as he described it.

According to Mr Goodings, he attained permanent employment, which to his mind was not precarious like casual employment, because he had worked in each consecutive week from the date of his engagement the number of hours per week, over the number of days per week, usually applicable to a full-time, and therefore permanent, employee. It is plain however that the respondent never told him that he was anything other than a casual employee and continued to pay him as such. Albeit that the applicant worked a substantial number of hours each week, the number thereof varied and they were performed as and when required by the respondent via advice from Mr Bradley Johnston to Mr Goodings. Mr Goodings was well aware that he continued to be paid the hourly rate appropriate for casual employment and therefore I do not think he truly believed he had become a permanent employee however, if he did, that was an assumption without reasonable foundation. Mr Goodings was not entitled to think that he was no longer subject to the limited employment tenure, and short notice of such being ended, which he understood casual employment implies. I am satisfied that the company had reserved to itself the right to deal with the employment relationship in that way. Notwithstanding however, the law is well settled that an employer exercising the right to dismiss an employee shall not do so unfairly.

Section 23AA of the Industrial Relations Act, 1979 places the onus upon the respondent to show that there is a ground or grounds on which the Commission could find that the dismissal

was justified. Absent such a ground, a claim of unfair dismissal is taken to have been established. However, if a ground be established which discloses a valid reason for dismissal the onus then falls to Mr Goodings to show that the respondent acted unfairly.

During the course of Mr Goodings working for the respondent he complained on a number of occasions that the truck, and the attached crane, had faults which made them unsafe to operate. Some remedial work was done but according to the applicant the company did not attend to many of the faults. On the last day that Mr Goodings worked, ie 18 October 1997, he complained to Mr Bradley Johnston and it is not disputed that the essence of his response was that if Mr Goodings was not satisfied with the truck he, Mr Johnston, would takeover the driving work. According to the applicant, the tenor of Mr Johnston's response showed he was annoyed by the complaint and his statement that he would drive the truck was delivered as a threat that the applicant would be replaced. A threat which the applicant asserts was given effect when he was not provided with work after 18 October 1996 and then such formally communicated to him by Mr Bradley Johnston on 24 October 1996 when he was told his services were no longer required. Mr Bradley Johnston has intimated that his comment was not made as a threat but as an offer to provide relief to the applicant. According to Mr Bradley Johnston, Mr Goodings was not the sole person to perform delivery work and there had been occasions during the weeks that the applicant had worked that he had also driven the truck and delivered steel reinforcing. And, in that same period, cartage contractors had also been engaged to undertake similar deliveries.

Had Mr Bradley Johnston replaced Mr Goodings and driven the truck, that would have reduced the work and consequently the wages of the applicant, there being no indication that alternative paid work would be provided. And, given that Mr Bradley Johnston was responding to what was another complaint in a series of them, I seriously doubt that he replied with benevolent intent and with the innocuous meaning he now ascribes to his reply.

According to the respondent 55% to 60% of the work performed by the applicant had been related to two contracts to supply and deliver prepared steel reinforcing. These contracts were described as "Delta" and the "Mandurah Bridges Project". Although Mr Goodings did not agree the percentage of his work these contracts occupied he conceded that they accounted for a substantial portion of the work he did. The respondent says that use of the company truck was reduced, and that occurred for the reasons that; "Delta" contract had been completed; the "Mandurah Bridges Project" contract was completed on 22 October 1996 with the delivery of steel reinforcing by a cartage contractor on that day, and on the day prior, the use of the contractors semi-trailer vehicles being both necessary and more efficient than using the company truck; general orders for steel reinforcing had declined because of a slight recession in the building industry; and that the respondent experienced a shortage of raw material and consequently a reduced capacity to supply prepared steel reinforcing. Hence no immediately foreseeable need to utilise the services of Mr Goodings remained. None of this was challenged as to fact, and there is no evidence that delivery work which remained, or any part of it, was unjustifiably withheld from Mr Goodings.

I am satisfied that, notwithstanding the reply Mr Bradley Johnston gave the applicant on 18 October 1996, the decision of the respondent not to allocate further work to Mr Goodings after that date was made for the reasons given and described herein. Those are valid reasons going to the operational requirements of the business and they do not disclose any unfairness associated with the dismissal. Accordingly the application will be dismissed.

Appearances: Mr W. Allen (of Counsel) appeared on behalf of the applicant.

Mr G. Johnston appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Daniel Goodings

and

Bestbar Pty Ltd.

No. 1599 of 1996.

6 May 1997.

Order.

HAVING heard Mr W. Allen (of Counsel) on behalf of the Applicant and Mr G. Johnston 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.

Murray Heslin Hamilton

and

Thermotest (Australia) Pty Ltd.

No. 1510 of 1996.

COMMISSIONER J.F.GREGOR.

9 April 1997.

Reasons for Decision.

THE COMMISSIONER: On the 18 October 1996 Murray Heslin Hamilton (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 unfairly dismissed from a contract of employment between him and Thermotest (Australia) Pty Ltd (Thermotest).

In short this application deals with the circumstances of the termination of the contract of employment of the applicant after he had been engaged on work at Varanus Island. The applicant had been involved with Thermotest in a series of casual engagements which commenced in 1994. These involved short term engagements where he would go to construction sites on behalf of Thermotest and heat treat pipe work. According to the information before the Commission there was a meeting between the applicant and the Managing Director of Thermotest, Mr Michael Campey. As a result of that meeting the parties entered into an employment arrangement on the expectation that it would lead to a long term association which provided the opportunities for the applicant to eventually move to a senior position with Thermotest. There were conditions attached to the arrangement. There was special mention made that the applicant's father had started up his own heat treatment company and that could lead to a conflict of interest. The letter of appointment (*Exhibit R4*) makes it clear that if there was conflict then immediate dismissal would occur with loss of all entitlements. There was another condition which is of more relevance to this application. The document provided that for the first three months the rate for ordinary time would be $14.00 per hour and that after a satisfactory probationary period of three months the rate would be uplifted to $15.00 per hour. It is clear from the face of the employment arrangement between the parties as it appears in Exhibit R9 that there was a probationary period of three months and that there were particular provisions relating to the behaviour of the applicant. I will later deal with the evidence from the witnesses which will expand upon these matters.

It is also relevant to record that there had been a previous attempt by the parties to form a long term relationship in July 1995 when the applicant was offered a contract of employment by the then Operations Manager, Mr Lloyd. That

agreement though was never executed by the applicant for the reasons he set out during his evidence which I will refer to later.

After entering into the employment contract the applicant went to Varanus Island where Thermotest was a sub-contractor to Pilbara Non Destructive Testing, a company for which it was heat treating pipe. The applicant was in charge of Thermotest's operations and responsible for making sure the appropriate consumables were on site. He had been on the Island a few days when his wife became ill. This necessitated him being evacuated from the Island. According to Thermotest this was done for a number of reasons. First Thermotest was anxious that in the situation faced by the applicant that he wanted to be with his wife as soon as possible, and second because of a complaint that had been received from the site construction manager who complained about some happenings on the Island over the weekend as the applicant tried to arrange his repatriation to Perth. After the applicant returned to Perth his services were terminated on one day's notice. This was done, according to Thermotest, because the applicant had made it clear by his behaviour that he was not prepared to change his attitude to the company and more particularly because the client was upset with his performance which reflected upon Thermotest. Thermotest then brought the contract of employment to a completion by giving the applicant a letter of dismissal. That letter appears as Exhibit S2. Formal parts omitted it reads as follows:

> *'In accordance with your letter of appointment we give you one days notice of termination of the abovementioned employment contract as from the above date.*
>
> *There is no need to make any further appearances at our office for the purpose of attending work only to return any tools or equipment belonging to Thermotest.*
>
> *Final pay will be prepared once any costs have been deducted.*
>
> *No explanation is needed for this decision and non is given.'*

Murray Hamilton, the applicant, gave evidence that he had commenced employment in June 1994 and on two occasions had been offered full time employment with Thermotest. The first was in July 1995 but he had declined to sign the employment contract because there was a clause in it he believed to be unfair. The applicant had subsequent employment with Thermotest in his belief on the basis that in due course he was to become a full time employee. He related that he had been invited into the office by Mr Campey, the Managing Director of Thermotest for a discussion around the 14 August 1996 and at that time he had signed a full time employment contract (*Exhibit R9*). His evidence was that there was no talk of any probationary period although he acknowledged that he knew of the provision in the contract. He did not think there was any validity in it because he had already spent over two years proving that he could complete the tasks that Thermotest required of him.

The applicant gave evidence that at the time the contract commenced there had been difficulties in his family due to illness. Notwithstanding those he went to Varanus Island on the 15 August 1996. This was the fourth time he had been to the Island. He worked on the 16 August 1996 and he became aware that there had been a deterioration of his family member's health to a stage where it was necessary for him to return home. He rang Mr Campey on Sunday at his home and explained the situation. Due to the circumstances he wanted to be with his wife and asked that arrangements be made to fly him off the Island. Mr Campey had responded positively saying he would try and make arrangements but the applicant was told there were no helicopters available on site for emergency evacuation until the following Tuesday and that Thermotest was not prepared to charter one especially for the task. There were then meetings of employees on the Island where there was some industrial action being planned for other reasons. The union representatives on site decided they would support the applicant's immediate evacuation from the Island on the basis that it did not matter how much it cost or whatever inconvenience caused it was important a person in his predicament should be able to be taken off the Island. Later the applicant did leave the Island and went straight to be with his wife. It was necessary for him to remain with her for 36 hours. Eventually he rang Thermotest to ask if he could have Thursday and Friday off to be with his wife. He was told then that he would not be required to come back to work and to return his tools. He says at the time Thermotest did not give him a reason for the dismissal. He later received the letter previously quoted in these Reasons (*Exhibit S2*). The applicant was cross examined in detail by Mr Randles who appeared for Thermotest. I will refer to the product of that cross examination later in these Reasons suffice to say Mr Randles attacked the evidence given by the applicant particularly concerning his performance and attitude. The applicant was also cross examined about the events on Varanus Island.

The Commission also heard evidence from Mr Michael Campey who is the Managing Director of Thermotest. He outlined the company's business. He described that heat treatment is a metallurgical application necessary to relieve stress in metals created by the welding process. When parts are welded together there is a stress induced by high temperatures and quick cooling. By application of heat, from electrical or gas sources to welded sections the heat treater relieves the stress by returning the steel in the welded area to its original molecular structure. Mr Campey had been involved in the heat treating business for many years. The applicant had been first engaged by Mr Nelson Hamilton, his father, when Mr Hamilton was operations manager at Thermotest. That engagement was predominantly on a casual basis. There was some thought given to a permanent relationship but that had not been entered into because Mr Nelson Hamilton had advised Mr Campey that it was better that the applicant be kept as a casual until he requested to become permanently employed. Mr Campey was unable to give evidence about early stages of the applicant's employment because he had been absent from Australia. He returned in 1996 and took over the running of the company after Mr Nelson Hamilton had resigned to set up operations in competition.

In June 1996 the applicant requested to become a full time employee. Mr Campey decided he needed to talk to him about his attitude at work and to people he had worked with. This was because his past history had shown many instances where tempers were raised and the client was unhappy. This had been a pattern when the applicant had been employed both at Copperheat and Thermotest. As far as Mr Campey was concerned this had to stop if there was going to be a smooth operation. He also wanted to ensure that the work could be done without aggravation. Mr Campey related instances where there had been difficulties in the past (*see Exhibit R1 and R2*). Eventually Mr Campey took advice from Gary Lloyd about the applicant. Thermotest employs the applicant's brother who has an excellent reputation and this lead Mr Campey to conclude that the applicant could reach the same standing with the company. Notwithstanding Mr Campey was still concerned about the potential for the applicant to misbehave so he prepared a document (*Exhibit R9*) which would set out the relationship.

Mr Campey gave detailed evidence, which I have no need to recite, concerning the work done by the applicant and doubts about its quality. This appears in Exhibits R5, R6, R7 and R8. He also described the responsibilities of a senior technician to set up a job particularly concerning logistics. The jobs to which the timesheets in the Exhibits referred occurred were done on casual engagement. This lead to a discussion for permanent employment. There were detailed talks about the duties and the termination requirements. The applicant had no objection to any part of the proposal and signed a document which set out the details. Under questioning from Mr Randles, Mr Campey explained why the provisions were included. He said that he had discussed the matters with the applicant to ensure that both of them understood the reason for the probationary period. Mr Campey said although the document does not relate matters concerning the applicant's attitude, the employment contract was drafted to ensure that the relationship could be kept on an even keel.

Mr Campey said that he had some knowledge about the health status of the applicant's wife and had discussed reservations about him going to Varanus Island with the applicant. After the applicant had left for the Island he had a contact from the applicant's father who said he needed to speak to the applicant and wanted contact numbers. Mr Campey spent some time finding them and passed them on. On the Monday morning he

received a call from the site supervisor who complained bitterly over happenings over the weekend on the Island. He had told the complainer, Mr Frank Lawton the site construction manager, that he knew that the applicant needed to go off site and was making arrangements for this. But speedy repatriation was not the only issued raised by Mr Lawton. He made complaints about unofficial meetings on the site and non procedural activities by the applicant. There were difficulties getting a helicopter but Mr Campey finally decided to charter a medium lift helicopter to do the job because there were no other light aircraft available. This cost the company in the order of $5,000. Mr Campey later had cause to be concerned about the quality of work performed by the applicant. When he returned to Perth, Mr Campey was upset that it appeared the applicant was not prepared to change his attitude to the company, but he was more upset by the fact that the client was unhappy. This was reflecting on the operations to the stage where the contracting companies were unlikely to place any more orders with Thermotest. It was clear that the applicant was not going to change his attitude and there was concern about the ongoing deteriorating relationship with the clients. He then gave the applicant one days notice.

Evidence was taken from Shellee Antney who is employed as a secretary at the office of Thermotest. She gave evidence that she had witnessed a conversation between the applicant and Mr Campey. She was able to hear the conversation from her workstation. As instructed she had prepared the documentation for the applicant's employment. She recalled that the applicant had been offered a trial period and that he was going off shore. She heard Mr Campey giving him a warning and ask him to be sure that he was prepared to go off shore. She thought that the reason for pressing the applicant about being sure was because of the sickness in his family. She was also sure that Mr Campey warned him to make sure he behaved himself and his work was done correctly.

Evidence was also taken from Mr Frank Lawton, who was the site construction manager on Varanus Island. He told the Commission that he was dissatisfied with the way the heat treating work had been done on site. He was particularly dissatisfied that the evacuation request was not made in the way set down in the procedures. He said that there was an evacuation plan and if the matter had come to him correctly that could have been put into operation. He said that he did express dissatisfaction to Mr Campey. In cross examination he said though that his focus was on the attitude of the applicant and not from a technical point of view. He thought his technical performance was adequate. Mr Lawton also observed that he had a problem with the applicant coming back to the Island because of his failure to use procedures. The work was on live plant and safety necessitates procedures need to be observed without fail. That would possibly be the impediment to the applicant being allowed to come back to the Island. In particular Mr Lawton observed that all of the safety and industrial relations procedures are in place for reasons and he expected a representative of the company, as the applicant was, would perform in line with the main contract.

I need to make some observations of the law to be applied. Mr Sturman raised the question of onus as it flows from Section 23AA of the Act. By that section Thermotest is required to establish

> *'there is ground or grounds on which the Commission could find the dismissal was justified'.*

This means that a dismissal is justified if there was a valid reason or were valid reasons connected with the employees capacity or conduct or, based on the operational requirements of the undertaking establishment or service, for the dismissal. The Act does not require that the employer act upon grounds which are justifiable but the employer establish that there is, or are, grounds on which the dismissal could be justified, whether or not the employer acted on those grounds. Therefore the Act requires that only the employer prove on the balance of probabilities the possible existence of justifiable grounds for dismissal, not the actual existence of those grounds.

On the basis of what has been put in these proceedings there is no doubt that Thermotest had a genuine belief that it's business would suffer if it continued to employ the applicant. Those circumstances would have provided a valid reason for termination and therefore the obligation placed on Thermotest by Section 23AA of the Act has been met (*Melissa Jaggard v. Tranby (1996) 76 WAIG 4720).*

Having made this preliminary finding the question is whether Thermotest has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1995) 65 WAIG 385*. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if for example it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz (1991) 71 WAIG 891 and also Byrne v. Australian Airlines (1995) 65 IR 32*). In *Shire of Esperance v. Mouritz* Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee is but an element in determining whether the dismissal was harsh or unjust. In view of the circumstances of this termination of employment in this case it is necessary to deal with the question of dismissal during a probationary period. This has been examined by Senior Commissioner G L Fielding in his Reasons for Decision in *Charles William Westheafer v. Marriage Guidance Council of WA (1983) 65 WAIG 2311*. In his Reasons the learned Commissioner observed:

> *'... in most cases the failure to re-engage will not constitute dismissal for the purposes of section 29(b) of the Act, although that is not a question which arises on this occasion.[See: Ex parte Wurth (1954) 55 SR (NSW) 47, and see too: Orange City Bowling Limited and Federated Liquor and Allied Industrial Employees Union of Australia, New South Wales Branch, 1979 AR (NSW) 90.]'*

Later in the Reasons for Decision in *Westheafer* and importantly for this case it is observed that

> *'The concept of probationary employment is well known and well understood in employment law. It is that an employer by engaging someone on probation throughout the period of probation retains a right to see whether he wants the employee or not in his employment as if the employee was still in the first interview. Hence there is no obligation on the employer to even objectively consider whether or not he should re-engage an employee at the end of the probationary period. The principles associated with probationary employment are now so well established that it is sufficient to refer in passing to in re Alchin and South Newcastle Leagues Club Limited (1977) AR (NSW) 236, a case with many features in common with this one and also to the New South Wales Teachers Federation and the Education Commission of New South Wales (NSW Industrial Commission Application No. 969 of 1984; 13 September 1984), where it was pointed out that probationary employment is but a step in the selection process and should be distinguished from permanent employment [see too: Ex parte Wurth case (supra)].'*

The first matter which needs to be addressed in my analysis of the evidence and submissions is the status of the employment contract. I find by reference to Exhibit R9 and to the evidence, that there was a clear understanding and binding contractual agreement that the applicant was employed for a period of three months on probation. The evidence of Ms Antney is important to this case. I find her to be a witness of truth and accept her recollections of the events which are crucial. First concerning the nature of the employment contract I accept her evidence that she typed the contract. She was well aware of it's contents and heard the exchange between Mr Campey and the applicant when the contract was entered into. It is clear that the applicant was on a probationary period of three months from the commencement date of the contract which meant that his probationary period would have continued until the middle of December 1996.

There is controversy between the applicant and Mr Campey about their conversations which lead to the contract of employment which was entered into and of which Exhibit R9 is evidence. The applicant has a different view of the events to Mr Campey. In fact their two stories are not compatible in many ways at all. To resolve the conflict the only corroborating evidence I have is from Ms Antney. She witnessed a conversation which lead to the contract and her version supports that of Mr Campey that he had questioned the applicant about going to Varanus Island at the time because of the health status of his wife. It is also clear that her story supports the evidence of Mr Campey that there was a serious discussion between the applicant and Mr Campey about the applicant's behaviour and that his work attitude in particular would be very much under scrutiny during the probationary period.

From the evidence of Mr Lawton it appears that while there was no complaint about the work of the applicant as a technician there was from Mr Lawton's point of view a complaint about his attitude to the extent that he would be uncomfortable having him back on the site because he (Lawton) could not be confident that the applicant would abide by procedures which are necessary when working with live plant. That is not a complaint which is directed to work procedures of themselves but to procedures on site generally. Mr Lawton's serious complaint about the applicant is that he did not act as a responsible company representative should have acted and this was passed on to Mr Campey. In the circumstances the applicant found himself, one has to allow some latitude. He was under extreme stress concerning his wife's health and one can picture his frustration in an isolated location such as Varanus Island about whether or not strenuous efforts were being made to lift him out of the Island to return to Perth. The truth of the matter was that Mr Campey on the evidence did take action to get the applicant off the Island as soon as was possible to the extent that he hired an alternate aircraft to conduct the evacuation knowing that would be extremely expensive. In due course Thermotest paid a bill of almost $5,000. The actions of Mr Campey certainly did not deserve the comment that was made in transcript by the applicant when he said 'I don't give s... how much it cost the bastard to get me out of there.' That remark was unfortunate because even though it relates to matters about which the applicant was extremely upset it reflects the applicant's opinion of Thermotest and in particular Mr Campey which does not indicate much hope for a successful relationship in the future.

When the applicant returned to Perth in due course he contacted Mr Campey who told him he was dismissed on a days notice and sent him a letter which has been reproduced earlier in these Reasons. It is clear that that letter and Mr Campey's response was misguided. Even though the applicant was on a probationary period he is entitled to know the reasons for his dismissal and he is entitled to be asked to respond to any of the issues which have given rise to the formation of the opinion by Thermotest that the contract ought to be terminated. To the extent that the applicant was denied the opportunity to comment, there has been a lack of procedural fairness in the decision making. The question is whether that lack of procedural fairness outweighs the other factors that ought to be considered. As it is noted in *Shire of Esperance v. Mourtiz* (Ibid) the lack of procedural fairness is but one of the issues which need to be taken into account.

In the circumstances of this case I believe that the lack of procedural fairness does not outweigh the other factors. It is clear that the applicant knew when he took the job that there was considerable doubts about his attitude. It was made clear to him that if he did not respond by changes in his attitude and approach there was little chance of long term employment with the company although it is also clear that Mr Campey's wish that there could be a long term relationship. The key to it was behaviour and attitude. The evidence is that the attitude of the applicant even taking into account his stressful personal circumstances was not satisfactory to Thermotest and on the rules that are established in the *Westheafer* case it was entitled to bring the contract to an end in a way that it did. This case is a matter of very fine balance and I have determined that on the balance of probabilities that I should accept the story as it has been put by Thermotest. For the reasons that I have set out above I find there has not been an unfair dismissal and the application will be dismissed.

Appearances: Mr G Sturman appeared on behalf of the Applicant.

Mr A J Randles, The Chamber of Commerce and Industry, appeared on behalf of Thermotest.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Murray Heslin Hamilton

and

Thermotest (Australia) Pty Ltd.

No. 1510 of 1996.

COMMISSIONER J.F.GREGOR.

9 April 1997.

Order.

HAVING heard Mr G. Sturman who appeared on behalf of the applicant and Mr A. J. Randles who appeared on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Kenny

and

Elmerside Pty Ltd t/as The Hotel Alexander.

No. 1723 of 1996.

COMMISSIONER C.B. PARKS.

16 April 1997.

Reasons for Decision.

IT is the claim of Mr Kenny that he was unfairly dismissed from his employment with the respondent on 13 November 1996, following upon his absence from duty on the previous day. The applicant asks that he be reinstated in employment, or alternatively that he be awarded monetary compensation. In addition he asks that he be awarded payment of two weeks' wages because the respondent terminated his employment without notice and he claims that such is therefore due to him in lieu of that notice.

Mr Kenny asserted that he was constructively dismissed from his employment on the premise that he was forced to resign because the respondent demoted him from his managerial position and had directed that he work in the lesser position of "Bar person". Counsel for the respondent contended that there was no constructive dismissal on that count because the transfer of Mr Kenny to bar work required that he retain supervision and other responsibilities that would contribute to his management training, his salary and conditions of employment were unchanged, that his contract of employment as a "Trainee Assistant Manager" stipulates his responsibilities and duties to be those as directed by the Hotel Manager, that the applicant consented to performing the bar work which he did perform for at least one day and then had a change of mind and submitted his resignation.

On 4 November 1996 the applicant met with Mr M. Toy, the Assistant Manager for the hotel. It was there communicated to Mr Kenny that there was some dissatisfaction with him and as a result he was to be transferred to the position of "Bar person" which was cited as work included in that of a "Trainee

Assistant Manager". The tenor of the minutes of that meeting (exhibit K7), and the testimony of Mr Kenny, disclose that the applicant objected to the transfer whereupon it was indicated to him that he either transfer to the position or resign. At the time Mr Kenny sought to involve Mr G. Harris, the General Manager and therefore the principal manager at the hotel, however he was absent from the hotel and efforts by Mr Toy to contact him by mobile phone were unsuccessful. On a subsequent day Mr Kenny met with Mr Harris and it was confirmed that management had decided Mr Kenny be transferred to bar work, that Mr Toy had handled the matter badly, and hence Mr Harris provided an explanation to the applicant of the supervisory role intended for him and the significance thereof to his training, and to the needs of the hotel. Mr Kenny requested, and was granted by Mr Harris, the opportunity to consider the transfer overnight. That he did and on the following day communicated to Mr Harris that he accepted the transfer and it then followed that Mr Kenny performed the bar work for a period of at least one day, and may have been longer. Then, on 11 November 1996, the applicant submitted his oral resignation to the respondent and gave notice that he would terminate his employment two weeks from that date.

Mr Kenny commenced employment as a "Trainee Assistant Manager" on 25 July 1995 when his responsibilities and duties were described to be those "...as directed by the Hotel Manager..." (exhibit K1). Throughout the period of his employment the applicant worked in various middle management positions which encompassed the term "Manager" or "Supervisor" within their title, the firstmentioned designating the superior position. For at least seven months prior to his meeting with Mr Toy on 4 November 1996, Mr Kenny occupied the position of "Banquet Supervisor" and, in addition, served as "Duty Manager" when rostered to do so on regular occasions during that period and, on occasions, during the eight months prior to that. In the view of Mr Kenny, having occupied several positions titled "Manager", and particularly that of "Duty Manager", he had progressed beyond the status of trainee and had attained managerial status within the management structure of the hotel. Hence, the direction by Mr Toy to transfer to the position of "Bar person" which he viewed as not managerial, and therefore inferior, and which had also been put to him in the light by Mr Toy, constituted a demotion not authorised by his contract of employment. In effect a repudiation of his contract of employment.

It is the testimony of Mr Harris, the General Manager, that the applicant remained a trainee throughout his period of employment and that, save for him fulfilling the role of "Duty Manager" as and when required, the other positions titled "Manager" he occupied had not been his substantive position, but he had been so located to temporarily replace the occupiers of those positions when they were absent from duty, or to temporarily fill a vacancy, and thereby gain experience in various facets of hotel management. According to Mr Harris the transfer of Mr Kenny to the position of "Bar person" was to involve another supervisory role for Mr Kenny with no reduction in his level of responsibility or his level of salary and conditions of employment. The minutes of the meeting held 4 November 1996 (exhibit K7) continue to describe the applicant as "Trainee Assistant Manager". I am therefore satisfied that Mr Kenny remained a "Trainee Assistant Manager" throughout his employment with the respondent and that, depending on the middle management position in which he was placed from time to time, his level of authority and responsibilities were commensurate therewith and thus waxed and waned. Notwithstanding the impression conveyed to Mr Kenny by Mr Toy, I am satisfied from what has been said by Mr Harris that the bar related role intended for the applicant involved work relevant to his trainee status. It was therefore work the respondent was entitled to have Mr Kenny perform in accordance with his contract of employment pursuant to his letter of appointment (exhibit K1). No repudiation of the contract, by the respondent, is therefore evident.

If the circumstances have some semblance of repudiation, the right of the applicant to claim that such constituted a dismissal vanished when he did not treat the employment contract as ended, and when, after an explanation from Mr Harris and his overnight consideration of the situation, he, Mr Kenny, consented to transfer to the bar work and subsequently undertook that work for a period. The apparent reconsideration of the event by Mr Kenny, and his change of mind in relation thereto, did not expunge what had been established. His decision to resign, and his notification of that to the respondent was an act of his own free will.

Notwithstanding that Mr Kenny gave notice of his resignation to take effect two weeks from 11 November 1996 the employment relationship was subsequently terminated shortly following the commencement of the notice period. At 13 November 1996 both parties accepted the employment relationship had terminated.

On 12 November 1996 the applicant contacted Mr R.T. Coster, the rostered "Duty Manager" for the respondent, and stated to him that he would not be attending the hotel to perform the bar work he was rostered to do later that day. According to Mr Kenny, he told Mr Coster that his reason for non-attendance for work was that, at the time he was rostered work, he would be attending an interview with a new employer. On the other hand, Mr Coster says that Mr Kenny gave him the reason that he would be engaged in employment with a new employer and would not be available to work. Mr Coster says that he responded and warned Mr Kenny that his action had consequences regarding his employment contract. On 13 November 1996, ie the day following Mr Kenny's absence from duty, he attended the hotel with the intention of performing the bar duties that day which he had previously been rostered to perform. There is no cogent evidence of what was said between the parties on 13 November 1996. It appears that management of the respondent, believing that Mr Kenny had commenced in alternative employment on 12 November 1996, concluded that the employment relationship had been ended and, acting on that presumption, appointed another employee to the bar position on that same day. If it were fact that Mr Kenny had undertaken alternative employment when absent, his attendance for duty on 13 November 1996 provided a clear indication that he had not completely abandoned his employment with the respondent. Mr Kenny absented himself from work without permission as though it were his right to do so. He was wrong. That was in breach of his duty to the respondent as his employer but it did not, of its own accord, bring the contract of employment to an end at 12 November 1996. It did however provide cause for the management of the respondent to expressly dismiss the applicant but the respondent did not so act. Simply put, the respondent did not allow Mr Kenny to resume his duties on 13 November 1996 notwithstanding that Mr Kenny had reported ready and willing to work the remainder of his notice period. That, in my view, constituted a repudiation of the contract and therefore a dismissal by the respondent which had immediate effect and that was unsatisfactory however, in light of the deliberate absence of Mr Kenny without permission, the dismissal was not unfair. Had I been satisfied there had been unfairness, the contract of employment was to have shortly ended through the resignation of Mr Kenny, he did not conduct himself as a faithful and diligent employee ought do, and therefore the degree of unfairness would be so slight as not to warrant his reinstatement or monetary compensation.

The final matter to be decided is the claim by Mr Kenny that his is due the payment of two week's wages in lieu of notice, according to his contract of employment. The letter of appointment issued to Mr Kenny and countersigned by him to signify his acceptance (exhibit K1), under the heading "Notice of Resignation or Termination" states—

> "We would require a minimum of two (2) weeks notice of resignation. In the event of termination, the same conditions will apply to the Company. Unless there are grounds for summary dismissal."
>
> (exhibit K1)

This aforestated term of employment requires that notice be given. There is no provision requiring that wages be paid in lieu of the required notice if notice is not given. Hence that which is claimed by the applicant is not a benefit due under his contract of employment.

Both the claims made by Mr Kenny are refused and therefore the application will be dismissed.

Appearances: Mr D. Kenny on his own behalf.

Ms K. Williams (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Kenny

and

Elmerside Pty Ltd t/as The Hotel Alexander.

No. 1723 of 1996.

16 April 1997.

Order.

HAVING heard Mr D. Kenny on his own behalf and Ms K. Williams (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.

Cara Muir

and

EGB Nominees Pty Ltd trading as Rottnest Hotel.

No. 50 of 1997.

COMMISSIONER P E SCOTT.

4 April 1997.

Reasons for Decision.

THE COMMISSIONER: This is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act, 1979 ("the Act") that Cara Muir has been unfairly dismissed from her employment with the Respondent. The facts in this matter are not in dispute except for a number of important points. The Applicant applied for employment with the Respondent as a waitress in Brollys Restaurant at the Rottnest Hotel. On Sunday, 22 December 1996 the Applicant's mother, Maxine Ellen Muir, received a telephone call from John Joseph Ephgrave, the Manager of the Rottnest Hotel, asking to speak to the Applicant. As she was not available, he indicated that he was phoning regarding employment. The detail of that conversation is in dispute however, it is agreed between the parties that he asked that the Applicant telephone Tania Freedman, the Restaurant Manager. Upon her arrival home, the Applicant telephoned Ms Freedman and it was arranged that she would commence work the next day. The Applicant says that she had gone there prepared to undertake work on the basis of full time employment for January, February and March 1997 and that she would be rostered to work on Christmas Day. However, on Christmas Eve she was advised by Tania Freedman that there was no need for her to work Christmas Day and that she could return home for that day. She did so. The Applicant cannot remember if she worked two nights or three nights however, it appears from her time and wages records that she worked a total of 22 hours between Monday, 23 December and Friday, 27 December 1996. At 4.20pm on Friday, at the conclusion of her shift she was called into Tania Freedman's office and told that there was not enough work and that she would be sent home. There is dispute between the parties as to whether the Applicant was told that she would be contacted if further work arose. The Applicant and another employee in the same circumstances as herself then asked to see Mr Ephgrave. They asked him why they had been layed off and he also advised them that it was due to a shortage of work. Once again, there is dispute between the parties as to whether they were told that if it got busy that they would be contacted. It appears that there was a somewhat heated discussion between the parties at that point and the Applicant left the employment.

The Applicant says that on the basis of the advice to her mother on 22 December by Mr Ephgrave that there would be 40 hours per week and 3 months work, as well as other details provided by him, and based on the detail provided to the Applicant by Tania Freedman, that the Applicant terminated her employment with other employers on the strength of the advice that she had three months work. She says that this was a guaranteed three months work. Her claim that she has been unfairly dismissed is based on:

1. the guarantee of three months work; and
2. her opinion that there was sufficient work to enable her to have continued.

The Respondent denies that there was ever any guarantee of three months work. Mr Ephgrave says that having been employed within the hotel industry for 25 years and having been manager of this hotel for seven years that he would never guarantee such employment. Further, he said that the basis of employing the Applicant and another employee was simply that theirs were the first two resumes taken from the pile of resumes of people who had applied for the work in response to the advertisement. They were contacted, sight unseen, with a view to them commencing on a casual basis. If they had proven themselves and were acceptable during a probationary period, then there may be other work available for them on a more permanent basis. It is also the Respondent's contention that the arrangements entered into in writing between the parties make it clear that the employment was not of a long term, permanent nature. The document, which was a letter to the Applicant from Mr Ephgrave given to her at the commencement of her employment says "during your first three months of employment you will be on probation. This means that during this period, breaking of any staff rules or poor work performance, will result in termination of employment." (Exhibit 3) The Applicant was then asked to sign the letter along with the staff rules and return them to the office, which she says she did. The Applicant also completed forms indicating that the nature of her employment was casual and that her rate of pay was the casual hourly rate from the Hotel and Tavern Workers Award.

The Respondent says that there was no need to specify that termination could also occur for reasons such as the employee's conduct or work performance, or for operational reasons such as a lack of work. It says that the fact that termination for breaking staff rules was stated is indicative that the contract was not for a fixed term.

The Respondent has denied that there was other work available which the Applicant could have done and evidence was called from Mr Ephgrave, from Tania Freedman and from Rachel O'Hare, a waitress who had worked in the restaurant at the hotel for some considerable period of time. Mr Ephgrave also says that other staff were employed to work in the hotel bar and that it was not appropriate for their employment to be terminated as a result of a lack of work in the restaurant. In addition, the sales figures for the hotel, and in particular the restaurant, were submitted to the Commission during the evidence of Mr Martin Zenetic, the Respondent's Accountant. These figures show a seventeen per cent reduction in gross sales between the relevant periods in 1995/96 and 1996/97.

Mr Ephgrave also says that the poor sales for the period was not able to be predicted. He says that not withstanding an extract from the Sunday Times of 19 December, 1996 (Exhibit 6) which would appear to indicate that there were large numbers of people on Rottnest Island at that time, that after the advertisement for casual staff and the employment of the Applicant but prior to her termination of employment, that he had met with the Rottnest Island management and it had been confirmed to him that there would be a restriction placed upon university students and other categories of persons coming to the island. He says, however, that these are not the normal clientele of the restaurant. The majority of the restaurant's clientele were what he referred to as "boaties"—those people who come to the island on their own boats. He says that even though the island itself may be crowded at times, the restaurant is not necessarily busy. Trade in the restaurant is dependent on the particular mix of people on the island.

In any event, he says that on Boxing Day, the bay where those boats would be moored was empty due to the way in which Christmas fell during that year and that people had chosen to leave the island and return to work instead of making a long weekend of it. He says that this is very unusual and had an impact on the hotel and the restaurant. He says that having noticed the quietness of the restaurant, he spoke with Tania

Freedman on the Friday and discussed that it would be appropriate to lay off the last two casuals who had been engaged. The Applicant was one of those two casuals. The Respondent also says that business has not subsequently picked up to a degree sufficient to warrant employment of additional staff and noted the departure of some existing staff and other staff turnover matters.

In evidence, notwithstanding her expressed view that she was engaged for a fixed period for three months, the Applicant was very equivocal about her understanding of the circumstances in which such an arrangement could be terminated by either party. She acknowledged that termination could occur if she broke the staff rules or if there was no work for her. Further, she said that although she did believe that it was not within her rights to terminate the employment should she really dislike the job, if her mother became ill, she may resign. However, the Applicant says that while she believes that her employment could be terminated if there was no work, she says that there was work, but she has not demonstrated that this was the case. On the contrary, it would appear that the Applicant does not understand the circumstances of there being a lack of work.

I am satisfied that the employer would not have guaranteed three months work to a casual employee who it had not interviewed. A hotel manager with the experience of Mr Ephgrave would not have entered into such an arrangement. It may well have been that there was an indication that work may have been available for the period January, February and March but no guarantee of such work was implied or stated. Further, I am satisfied that there was not sufficient work for the Applicant. Whilst it was within the Respondent's discretion to transfer her to another area, the employer had engaged her on the basis that she would work in the restaurant and had engaged others to work in the hotel bar. It is not at the Applicant's discretion to move to another area. I am satisfied that the employer was not in a position to have known that there would be this lack of work and that whilst there may have been rumours of restrictions being placed on certain categories of people coming to the island, these people do not necessarily form the clientele of the restaurant. I am satisfied that the employment was of a casual nature and could be terminated at very short notice. I am satisfied that there was a basis upon which the employer could terminate the employment being operational reasons. The grounds upon which the Applicant relied in coming to her conclusion that she had been unfairly dismissed have not been demonstrated. On the contrary, the employer had demonstrated that they are not justified. On this basis the application of unfair dismissal will be dismissed.

Another matter remains and that is that the Respondent seeks costs for fares for Ms Freedman, Ms O'Hare and Mr Ephgrave from Rottnest and return on two occasions . These were, firstly, for the purpose for the proofing of witnesses and, secondly, for the hearing of the matter. These persons came by plane rather than ferry as the arrival times of the ferry would have made meeting with their advocate prior to the hearing impractical. The Respondent's grounds for seeking costs are that the claim was vexatiously pursued, that the Applicant knew her claim was bound to fail, that she did not really understand the meaning of a fixed term contract although she relied on it as a ground of her claim, that the Respondent went to considerable time and effort, during the conciliation and production of documents processes, to provide the Applicant with information to demonstrate its case. Even at the commencement of the hearing, the grounds for the Applicant's case, and the claims itself, were unclear, and she provided no counter argument to those put by the Respondent.

The basis upon which the Commission usually deals with claims for costs are set out in the decision of the Full Bench in Brailey and Mendex Pty Ltd trading as Mair and Co Maylands (73 WAIG 26 at 27). In this case, I accept that the Respondent went to considerable efforts to provide the Applicant with information to demonstrate that there was a real downturn in work. It was also understood during the conference dealing with the application for the production of documents that if the Applicant was provided with the hotel's and the restaurant's sales details and other information that satisfied her of the relative decline compared with the previous year that she would not pursue her claim further. This information was provided, and was not challenged by the Applicant. Further, it is clear that the Applicant had no real understanding of the basis of a fixed term contract, on which she relied as part of the grounds of her claim.

In these circumstances, the only possible explanations for the Applicant pursuing her claim are either that she thought she had nothing to lose by going ahead and/or that she was doing so vexatiously. In either circumstance, these do not provide a reasonable justification for the pursuit of a claim involving the Respondent in considerable inconvenience and cost, and wasting the Commission's time when such is provided at a cost to the public purse.

The Respondent made its best endeavours to satisfy the Applicant in the genuine belief that, unless she had reasonable grounds for challenging the information provided, the matter would not proceed. No such reasonable grounds, nor any real challenge was made by the Applicant.

Further, the Commission explained to the Applicant during the conference dealing with the application for production of documents, that claims for costs may arise in these matters.

I note that this claim for costs is not entertained merely because the unfair dismissal claim is lacking in merit. Rather it is because it was pursued after the Applicant had been given every assistance to consider and understand her position and yet she came forward with no alternatives or challenges to the basis upon which the Respondent justified its actions.

In final consideration of this matter, I am guided by the terms of s26 of the Act. This is a jurisdiction which deals with applicants and respondents, many of whom are not advised or represented by counsel or by others with a detailed understanding of the legal process and of the law. I believe that the Applicant felt genuinely aggrieved by the circumstances in which she found herself, having given up regular casual employment to pursue the prospect of three months work. She believed that what she was taking up was the probability of three months work. It was clear from the evidence that it was not a guarantee, but was a prospect, a probability. This did not come to pass. After only 22 hours work, this probability disappeared, through no fault of hers, nor through the fault of the Respondent. The Applicant has tried to mitigate her loss. In doing so, she has acted on an unjustified premise and created cost and inconvenience. In weighing the question of costs, I have considered the circumstances, and that while the principle espoused by the Full Bench in Brailey's case (op cit) would urge against the awarding of costs, the circumstances require some consideration for the Respondent. On this basis, I will award to the Respondent, an amount of $180.00 being half the cost of the air fares claimed. This seems to be an equitable compromise, while making the point regarding the pursuit of such claims in these circumstances.

APPEARANCES: Ms C Muir on her own behalf.

Mr A Smetana on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cara Muir

and

EGB Nominees Pty Ltd trading as Rottnest Hotel.

No. 50 of 1997.

COMMISSIONER P.E. SCOTT.

15 April 1997.

Order.

HAVING heard Ms C Muir on her own behalf and Mr A Smetana on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. That the Applicant pay to the Respondent the amount of $180.00 no later than 28 days from the date of the Order; and
2. That the application otherwise be and is dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kathleen O'Neill

and

Complexions Beauty Salon.

No. 102 of 1997.

2 May 1997.

Order.

WHEREAS an application alleging unfair dismissal under S.29(1)(b)(i) of the Act was lodged on 17th January 1997;

AND WHEREAS a notice of answer and counter proposal was lodged by the Respondent on 6th February 1997;

AND WHEREAS on 12th February 1997 the applicant requested that the application be dealt with in accordance with the Act;

AND WHEREAS a conference was held by the Commission under S.32 of the Act on 12th March 1997;

AND WHEREAS the possibility of settlement did not eventuate and advice of this given to the Commission on 13th March 1997 at which time the applicant confirmed that she was proceeding with the application;

AND WHEREAS the Commission set the matter down for another conference at 10.30am on 15th April 1997 and advised the parties that if the matter could not be settled it would proceed to hearing at 11.30am on that day;

AND WHEREAS at 10.30am Mr T. Crossley, Agent for the Respondent attended the Commission to participate in the conference but the applicant did not attend;

AND WHEREAS at 11.30am on 15th April the Commission sat in accordance with the Notice of Hearing to hear and determine the matter;

AND WHEREAS the Respondent and her Agent attended the hearing with witnesses and the Applicant did not attend;

AND WHEREAS the Respondent submitted that the application be dismissed for want of prosecution and that costs be awarded pursuant to the Act to assist in meeting the expense of arranging attendances by witnesses, for the hearing;

AND WHEREAS it was submitted that the witnesses had attended the hearing to give evidence and that arrangements had been made for relief staff to be employed during their absences and that transport and parking costs had been met by the witnesses in attending the hearing;

AND WHEREAS it was submitted that the cost of arranging relief staff for each of the witnesses was $150.00 and that the cost of transport and parking had been $15.00 for each witness;

AND WHEREAS the Commission considers that the application should be dismissed for want of prosecution and that the Respondent has incurred costs in arranging for the witnesses to give evidence and that it could reasonably have been expected that the witnesses would have been required to attend the Commission for an extended period during the day. Furthermore it is accepted that additional costs were incurred in the transport and parking by the witnesses;

NOW THEREFORE the Commission, although mindful of the general policy in industrial jurisdictions that costs ought not be awarded except in extreme cases (Denise Brailey v. Mendex Pty Ltd t/a Mair and Co Maylands (73 WAIG 27)), considers that in the circumstances of this matter that the application for costs is justified. The Applicant had confirmed her intention to pursue the claim and ample notice was given of the time at which the hearing was to take place (ie. the Notice was forwarded to the parties on 14th February 1997). In view of all of the factors and particularly the costs incurred by the Respondent in making arrangements to contest the claim, the Commission hereby Orders—

(a) THAT the application lodged pursuant to S.29(1)(b)(i) of the Act be dismissed for want of prosecution;

(b) THAT pursuant to S.27(1)(c) of the Act the applicant pay to the Respondent the sum of $300.00 being costs incurred in arranging relief staff so that evidence could be presented at the hearing on 15th April 1997; and

(c) THAT pursuant to S.27(1)(c) of the Act the applicant pay Mrs S. Martin and Ms M. Butler the amount of $15.00 each for costs associated with travelling to Court on 15th April 1997; and

(d) THAT the amounts specified in clauses (b) and (c) above be paid to Complexion Beauty Salon, Mrs S. Martin and Ms M. Butler respectively within 28 days of the date of this Order.

(Sgd.) W. S. COLEMAN,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin David Rankin

and

Reed Construction Services Pty Ltd.

No. 1851 of 1996.

COMMISSIONER R.N. GEORGE.

8 April 1997.

Reasons for Decision.

THE COMMISSIONER: This Application comes before the Commission pursuant to Section 29(b)(i) of the Industrial Relations Act, 1979, as amended. By it the Applicant claims that he was unfairly dismissed from his employment and seeks by way of remedy re-instatement or, in the alternative, compensation equivalent to six months salary at the rate of $50,000 per annum.

Proceedings were assisted by a document headed "Reference for Hearing" prepared following a conference which failed to achieve a resolution between the parties.

For convenience the terms of that document are set out below in full—

"Dispute

The applicant claims he was unfairly dismissed and seeks compensation equivalent to three (3) month's salary.

The respondent denies the applicant was dismissed unfairly and objects to the claim for compensation.

Agreed Particulars

(1) The applicant was employed as an on site contracts administrator by the respondent.

(2) The site involved is the Southlands Shopping Centre project in Willetton WA.

(3) The respondent's business is building construction.

(4) The respondent (sic) headquarters are in Sydney NSW.

(5) The expected project is scheduled for completion in or about September 1997.

(6) The applicant commenced employment on 14 August 1996.

(7) The salary rate was $50,000.00 gross per annum.

(8) The employment was terminated on 31 December 1996.

(9) The reason given by the respondent for dismissal was a down turn in work.

(10) There was no criticism of the applicant's work raised with him during his employment.

Summary of the Applicant's grounds for claim of unfair dismissal

The applicant says—

(a) that he is an experienced contracts administrator in the building construction industry with 23 years in the business in Western Australia.

(b) that he left his previous employment to take up the position with the respondent having been given to understand by the respondent that the employment would be for the duration of the project which was expected to be completed in 15 months.

(c) that as well as the reasonably based expectation of life of the project employment arrived at at the time of offer and acceptance of employment, the respondent endorsed this expectation on occasions when the contract was on foot.

(d) that the respondent, in replacing him with a Sydney based employee allegedly because of a down turn in available work there, the respondent acted harshly, oppressively and unfairly to the applicant and repudiated its commitment to employ him for the life of the project.

(d) that, in compensation, the applicant seeks payment of a sum equivalent to three months' salary ($12,500.00 gross).

Summary of the respondent's answer

(a) that the building construction industry was subject to downturns and that the applicant, was well aware of this;

(b) that the respondent business had missed out on a succession of tender jobs which made it necessary to rationalise its work force across Australia;

(c) that the decision to replace the applicant by an employee transferred from Sydney was part of this rationalisation;

(d) that the applicant was given ample notice of this;

(e) that the respondent business had the right to re-organise its affairs and there was no unfairness in all the circumstances in its decision to terminate the employment of the applicant;

(f) that the claim for compensation had no justification."

The "Reference for Hearing" was forwarded to the parties with advice that if either of them wished to amend any particular or detail they should put the amendment in writing to the Commission with a copy to the other party no later than 7 days prior to the date of hearing. Both parties notified of amendments within the time specified in the following terms (formal parts omitted).

Applicant's Amendment

"Dispute

Compensation equivalent to six (6) months salary is now claimed because it is now realised how prejudice related to dismissal after 4 months of a 15 months contract is stronger than had been anticipated at the time of formulating the claim (20.12.96). This has resulted in an unusually high level of rejection at job interviews.

Also, the continuing lack of income has aggravated the debt situation which was incurred as a direct result of the 15 months' income expectation created by Reeds' employees during my time of employment.

It is now quite clear that my original plan to take a "term" contract with Reeds in order to successfully complete this large, prestigious project and thereby ensure long term employment with large Perth based companies has worked to my detriment. It is now clear that rejection, even for reasons not related to performance, stigmatise to the point of unemployability in a close knit community."

(Response filed 17 March 1997)

Respondent's Amendment

"We refer to the Commission's letter dated 26 February 1997 and the attached schedule and advise as follows—

(1) The Respondent does not agree to Agreed Particular 10 and requests that it be deleted.

(2) At the end of sub paragraph (a) of the Summary of the Respondent's Answer the Respondent requests that the following be inserted:

"or should have been aware of this" "

(Letter dated 18 March 1997)

The facts in this matter are largely uncontroversial and may be summarised as follows.

Prior to his appointment to the position the subject of these proceedings the Applicant worked for Collier Homes, a fully owned subsidiary of Smith Corporation. Due to some uncertainty about his future with his then employer, because of what he understood concerned financial difficulties experienced by the parent company and the possibility of a takeover of Collier Homes, the Applicant replied to a newspaper advertisement placed by the Respondent calling for applications for the position of Contracts Administrator. The Applicant was successful in his application and accepted appointment on terms set out in a letter from the Respondent dated 20 August 1996 and signed in acceptance by the Applicant on 26 August 1996. The letter of appointment specified the conditions under which the employment was offered and accepted. Paragraph [4] "Employment Conditions" provided that employment conditions were to be in accordance with the laws of the State of Western Australia applicable at the time of employment or as may be amended from time to time by legislation (Exhibit S1). It is common ground that the Applicant's employment was not covered by an award.

The Applicant commenced employment with the Respondent on 14 August 1996 and while it is accepted that the contract was not for a fixed term, both parties anticipated that it would be for the life of what is known as the "Southlands Boulevard Redevelopment Project" (hereinafter referred to as the "Southlands Project) which at that time was expected to conclude in approximately 15 months. The Respondent employer had 6 direct employees on site, including the Applicant, reporting to the Project manager for the Respondent, Mr John Stalley. Three of those employees were NSW based and were to return there at the conclusion of the contract. It was proposed that the Applicant would continue his work on site for a time to deal with matters which required attention once work on the project had been completed. Whether there was to be any further work for the Applicant was dependent upon whether the Respondent was able to secure further contracts, an objective which it had been indicated to the Applicant was being pursued on an ongoing basis.

Around September/October 1996 Mr Graydon, the Construction Manager for the Southlands Project, informed Mr Stalley that due to a downturn in work it was his intention to transfer a Mr Tran, an employee of the Respondent for approximately 18 months, from NSW to the Southlands Project as Contract Administrator. Sometime in November 1996, after it had become clear to Mr Stalley from his regular visits to the Head Office of the Respondent in NSW, that the work available was diminishing and that the Respondent had been unsuccessful in its attempts to secure new contracts, he outlined the status of the business to the employees on the Southlands Project, including the Applicant. On about 3 December 1996 Mr Graydon confirmed with Mr Stalley that Mr Tran was to be transferred from NSW and that he would as a consequence have to terminate the services of the Applicant.

On either 3 December or 4 December 1996 Mr Stalley informed the Applicant that his services would have to be terminated. When asked for reasons Mr Stalley explained to the Applicant that due to a significant downturn in work available to the Respondent a number of positions had become redundant and that in using the last on first off "principle", the Applicant was one of those who had been identified as being surplus to requirements. In the discussions which followed between the Applicant and Mr Stalley the question of notice was raised. Mr Stalley informed the Applicant that it was the practice of the Respondent to provide notice of one week but in the circumstances he would see if that could be extended to two weeks. The Applicant then asked whether notice could expire after the Christmas break because of the obvious difficulties that would result from the unexpected early termination of his services at that time of the year. On about 10 December Mr Stalley confirmed with the Applicant that he was to be given two weeks notice to commence from 17 December 1996. The notice was to expire on 31 December 1996. These arrangements were confirmed in an internal memo from Mr Stalley to a person named Carmello in the following terms

" Martin Rankin—Termination

Confirming the following details for Martin Rankin as discussed this morning.

- Formal notification date 17.12.96
- Two weeks in lieu to be paid from this date (i.e. 18.12.96 to 31.12.96)
- Last day of work by Martin will be 20.12.96
- Reason for termination: Retrenchment

- Please send necessary forms and pay advice for signature by Martin etc."

[Exhibit S7]

On 11 December 1996 Mr Tran commenced work in Western Australia having transferred from NSW. The Applicant's final day of work was on 19 December 1996 when he was told that he need not report the following day. The Applicant was paid up to 31 December 1996 and although he suggested in his evidence that holiday pay to which he was due was absorbed into that payment, details recorded on his Termination Form (Exhibit S8) indicate that holiday pay was in fact paid in addition to the payment for the notice period expiring on 31 December 1996. From the time the Applicant was advised that his notice was to commence from 17 December 1996 he was encouraged by Mr Stalley to utilise whatever facilities were available through the Respondent to maximise his potential of securing alternative employment.

Attempts by the Applicant to find alternative full time employment have not been successful, despite the fact that he has made some 40 applications and approaches to other companies. (See Exhibit R5 which lists 29 jobs applied for and companies approached between 20 December 1996 and 12 March 1997). He currently has casual employment for two days a week which commenced in the week ending 8 March 1997.

It is against the background that the Applicant claims that he was unfairly dismissed. His reasons for so claiming can be summarised as follows.

1. The Applicant left his previous employment with the Respondent having been given to understand by the Respondent that the employment would be for at least 15 months, an expectation that was endorsed while the contract was on foot.
2. The Respondent should have obtained further contracts to avoid the need to retrench employees or kept Contract Administrators on as Estimators as he understood had been the practice in the past.
3. His replacement by an employee from NSW was not based upon impartial considerations and failed to take into account his age, experience and the fact that he was a locally based employee.

Conclusion:

There is no doubt that when the Applicant applied for the position from which he was terminated both parties expected the employment to last for at least 15 months. This view was reinforced during the course of the Applicant's employment through discussions about other contracts for which the Respondent was tendering. The contract of employment was not, however, fixed in its term and this is conceded by the Applicant. There is also no doubt that the Respondent, in the period prior to the Applicant's termination, experienced a significant downturn in its business. This is demonstrated in a series of graphs submitted in evidence through the Construction Manager, Mr Graydon, as exhibit S2. The graphs show the extent of change in work in hand (in terms of both dollars and number of projects), progress claims and the number of direct employees. The latter graph shows a reduction in the number of direct employees from a peak of 57 in February 1996 to a low of 38 in December 1996. In August 1996, when the Applicant was appointed, direct employees numbered approximately 52.

In determining who should be laid off and who should be retained the Respondent adopted a first on last off approach, a practice generally followed in the construction industry. At the time of his termination the Applicant had been in the employment of the Respondent for some four months. The employee who was retained and took over his position, Mr Tran, had been in the employment of the Respondent for some 18 months (See Exhibit S5). In an attempt to demonstrate that Mr Tran had been given favourable treatment and that his retention ahead of others, including the Applicant, was not the result of impartial consideration, the Applicant pointed to two longer serving Contract Administrators who had left the Respondent while Mr Tran was retained. It was the evidence of Mr Stalley, however, that those employees in fact found other work and resigned after becoming aware of the potential consequences of the Respondent's inability to win new projects.

In all of the circumstances I find that the decision to terminate the services of the Applicant was based upon the operational requirements of the Respondent which resulted in a situation of redundancy. The meaning of 'operational requirements' is discussed by the Full Bench of the Commission in Jacob Gilmore and Cecil Bros, FDR Pty Ltd and Cecil Bros Pty Ltd. In that matter the Full Bench adopted the meaning given to that term by Lee J. in Nettlefold v Kim Snoker Pty Ltd (FL unreported delivered 4 October 1996 No. T195/1`334) where he said.

> "...that permits consideration of many matters including past and present performance of the undertaking, the state of the market in which it operates, steps that may be taken to improve the efficiency of the undertaking by installing new processes, equipment or skills, or by arranging for labour to be used more productively, and the application of good management to be undertaken. In general terms it may be said that the termination of employment will be shown to be based on the operational ground if an undertaking if the action of the employer is necessary to advance the undertaking and is consistent with the management of the undertaking that meets the employer's obligation to employees."
>
> [76 WAIG 4434 at 4444]

In the case presently before the Commission the evidence shows that when the Applicant was appointed to his position the number of direct employees was relatively high and did not reflect the fact that the work of the company was in a downwards trend. The position was exacerbated by the fact that the Respondent had been unsuccessful in a number of tenders it had submitted for new work. In the circumstances the actions of the Respondent were necessary to advance the undertaking and were "consistent with the management of the undertaking that meets the employers obligations to employees" (Supra).

In Gromark Packaging v FMWU 73 WAIG 220 Franklyn J (then Acting President) of the Western Australian Industrial Appeal Court referred to a definition attributed to "redundancy" by earlier authorities which held that redundancy occurs "when the job is abolished". Franklyn J. Went on, however, to make the following comment.

> "As a statement it correctly sets out one set of circumstances which could establish redundancy but in my view cannot be accepted as the ultimate definition. On the evidence accepted by the Commissioner the workforce was reduced because there was labour in excess of that reasonably required to perform the work available to the employer. That reveals a situation of redundancy, leaving for decision the selection of specific workers for termination of their employment to relieve that situation. That was the case in Australian Shipbuilding Industries (*supra*) at 733. See also North West County Council v. Dunn (1971) 126 CLR 247 Walsh J at 263"
>
> [Supra at 224]

As to whether the dismissal was unfair, I do not find that such a claim can be sustained. Mr Stalley kept the Applicant informed of the Respondent's attempts to attract new work and the status of the Respondent's business as it became clear to him from his regular visits to the NSW office. As soon as it was confirmed by Mr Graydon on 3 December 1996 that Mr Tran was to be transferred from NSW due to lack of work and that as a consequence the Applicant would be surplus to requirements, Mr Stalley informed the Applicant and discussed with him the reasons for the decision and what notice would be given. The Applicant's request that notice be deferred so as not to expire before Christmas was taken up by Mr Stalley and was not given officially until 17 December 1996 so that it would expire on 31 December 1996. This was despite the fact that it was known by 10 December that the Applicant would not be working beyond 20 December 1996. Under the contract entered into by the Applicant his conditions, including notice, were agreed to be 'in accordance with the laws of the State of Western Australia applicable at the time of employment or as may be amended from time to time by legislation" (Exhibit S1). While neither party could be specific about which laws were being referred to it was not alleged that there had been a breach of any law and it was common ground that the Applicant's employment was not subject to an award of the Commission.

As to the claim by the Applicant that the decision to retain Mr Tran ahead of himself was not made impartially I am not persuaded that such is the case. It is confirmed in Gromark Packaging v FMWU (Supra) that the evidentiary onus is on the party alleging unfairness in the selection or termination of employment to show by specific comparison with other employees that the selection was unfair. That onus has not been discharged by the Applicant.

Taking all of the evidence before the Commission into account I have formed the opinion that the claim by the Applicant that he was unfairly dismissed is not made out and that his consequential claim for compensation must also fail. The Application is therefore to be determined by an Order that it be dismissed.

Appearances: Mr M.D. Rankin on his own behalf.

Mr A. Smetana on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin David Rankin

and

Reed Construction Services.

No. 1851 of 1996.

COMMISSIONER R.N. GEORGE.

8 April 1997.

Order.

HAVING heard the applicant on his own behalf and Mr A. Smetana on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be dismissed.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anita Maria Schroeder

and

Creative Sales.

No. 1638 of 1996.

COMMISSIONER J.F. GREGOR.

2 May 1997.

Reasons for Decision.

THE COMMISSIONER: On 12 November 1996, Anita Maria Schroeder, 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 by Creative Sales (the respondent) had been harsh, oppressive and unfair. She also claimed there were outstanding benefits due under her contract of employment to which she was entitled at the date of termination.

On 7 May 1996, the applicant was offered a position with Creative Sales, an integrated marketing agency. The offer of employment set a commencement date of 20 May 1996. The applicant was to receive $25,000 per annum which includes superannuation guarantee levy, overtime and holiday loading. The letter of offer also advised that all employers of Creative Sales are employed on a six monthly probationary period as was detailed in terms of employment which were attached to the letter of offer. At the time the offer was made the applicant was to be subordinate to the state manager of Creative Sales Perth, Ms Lynn Allen.

The main duties of the position of the applicant were that of an account co-ordinator. As was described to the Commission, this involved duties ranging from arranging leasing bookings, liaising with the state manager concerning sorting promotion materials, preparing venue lists and other matters relating to co-ordination of accounts associated with field marketing programme implementation. There was some other facets of the position as well. The applicant was to be involved and supervise account management which involved the preparation of proposals, budget estimates, the determination of requirements and consumables for a promotion, maintenance of financial records and liaising with clients concerning store schedules including weekly amendments.

In execution of the duties the applicant was required to ensure that her work was carried to the highest quality. She was to build and maintain good relationships with clients, suppliers and field staff and act in a professional manner. There were obligations upon her to ensure the cost estimates, invoices and all written correspondence were accurate. She was also to ensure that the intellectual property of the company was protected. The job description made it clear that the applicant was accountable to the state manager for the timely and accurate completion of all of her activities. Among the skills required for the job was the ability to prioritise, work in a team situation, manage a number of projects simultaneously and show empathy for team members, clients, field staff and suppliers. There were other skill requirements which need not be examined in these Reasons.

The respondent had set up a new office in May 1996. The state manager of the office, Ms Lynn Allen was brought from Melbourne to run Creative Sales operations in Western Australia. The applicant had been offered a position as account co-ordinator. It was a job she had not carried out before but she had knowledge through previous employment about the respondent's operations. It seems that when the respondent's WA operations first moved to the control of Ms Allen, the staff worked long hours including overtime. In particular the applicant and Ms Allen spent a lot of time together. On the evidence they were fully involved and dedicated to maximising market share for Creative Sales and ensuring its success. In September 1996, there was a meeting between Ms Allen and the applicant and various problems that both saw with the running of the office were discussed. In particular the applicant was concerned about the long hours she was working. During the conversation between the two women there were disagreements between them on a number of issues but ultimately it was agreed that the applicant would not continue to work the long hours. Instead some adjustments were made, for instance the applicant was not to pick up the mail in the morning and she would try to keep her working day to between 9.00am to 5.30pm. It is clear from the evidence and it is not alleged to be otherwise that the discussion which led to the diminution of hours worked by the applicant was not in any sense criticism of her attitude to her work it was merely an adjustment agreed between the parties to promote better working arrangements within the office.

Even though there was a great deal of evidence about the management standards of the respondent and the applicant's later expressed concerns about that, it appears that Ms Allen never complained about the applicant's work or the standard of her work at that time. Ms Allen did allege though that from September on there was a change in the applicant's attitude to taking instructions from her. In particular being told how to prioritise her work. The applicant in her evidence made it clear that one of her responsibilities under her contract had been development of skills relating to prioritisation. She felt she was perfectly capable of arranging her work programme to get her work done efficiently and effectively within the time allowed. From her evidence too it appears as though the applicant had developed the opinion that Ms Allen was floundering with her management techniques. In fact her opinion was that Ms Allen's management experience was limited and this was causing problems. One of those problems led the applicant to make a comment about the way the work was shared. She claimed Ms Allen was doing less work than her on promotional activities.

The relationship between the applicant and Ms Allen deteriorated further on or around 17 October 1996. The office was then being visited by another employee of Creative Sales

based in an eastern states office. The evidence of Ms Allen is that the staff were all told that an employee from the eastern states would be visiting. Ms Allen decided that the staff would have lunch with the visitor to take advantage of the opportunity to talk to her about the way Creative Sales operated in other states and exchange information which might be of mutual benefit. The employee from the eastern states duly arrived and at lunch time on that day when Ms Allen was about to leave ,the applicant indicated she would not be coming as she had bought her lunch. There was some controversy about whether the applicant was told to monitor the telephones in the absence of the rest of the staff. Ms Allen says that she was. This meant to Ms Allen that the phone lines would be kept open and the answering machine would not be turned on. It was the policy of the office that when staff were absent at lunch the answering machine would be switched on. Ms Allen says that she instructed the applicant not to do so on this occasion.

When Ms Allen together with the visitor and other staff returned from lunch an argument erupted between the applicant and Ms Allen. There is controversy about the argument. Ms Allen's version is that she asked the applicant whether there were any messages. She said she did not know but the answering machine had been on. Ms Allen says she was invited to check for herself and this lead to a heated exchange between them which was described by Mr Sean Clancy, the Executive Director of Creative Sales as an 'unruly discussion with unnecessary emotional comment from both sides'. In a letter to the applicant dated 3 December 1996, he described the event as 'unfortunate' (*Exhibit I4*).

The events following the return to the lunch from the staff are best recorded in the evidence of Ms V J Pilkiw. In cross examination she said that everyone had come back from lunch having had a good meal and were happy. Ms Allen had asked the applicant if there were any messages. She had responded with words to the effect 'I don't know, check the answering machine'. There was an argument between the applicant and Ms Allen during which the applicant debated with Ms Allen who was more qualified for the managers job. Ms Pilkiw thought the conversation was two way with the parties each firmly putting their views. She said that she had remembered the comments because she had heard them frequently expressed by the applicant. Ms Pilkiw recalled that Ms Allen had asked the applicant whether she would accept instructions. She had said 'No I won't'. That had stuck in Ms Pilkiw's mind because she thought it was not a common practice to tell the boss that you would not accept instructions from them. She had no doubt they were work instructions such as what different programmes had to be undertaken. Ms Pilkiw did not hear Ms Allen tell the applicant she was fired but she did hear the applicant call out 'Did you hear everyone, She's sacked me'.

There is some debate during the proceedings about whether the applicant was dismissed. Relevant information before the Commission is contained in *Exhibit I3*. The exhibit which was sent to the applicant on 21 October 1996 advises her that—

> *"We are terminating your employment effective 17th October, 1996.*
>
> *The reason for termination is clearly evident by your non compliance in line with your job description.*
>
> *We have exercised the 6 month probation clause as per your Employment Letter of Offer and Conditions of Employment." (Exhibit I3)*

That is a sufficient scan of the facts in the matter. The Commission heard from a number of witnesses. The applicant gave evidence on her own behalf. Mr Sean Clancy gave evidence of his role in the events as they unfolded and his attempts to resolve the problem. The Commission also heard evidence from Ms Lynn Allen and from Ms Vanessa Pilkiw who is currently employed as an Account Co-ordinator with Creative Sales. There is no need to summarise the evidence of each of the witness in detail. The proceeding narrative is drawn from their evidence. Before I make my findings on the witness evidence I need to review the law to be applied.

Ms Inkster, of Counsel, who appeared for the applicant raised the question of the onus as it flows from Section 23AA of the Act. By that section the respondent is required to establish

> *'there is ground or grounds on which the Commission could find the dismissal was justified'.*

This means that a dismissal is justified if there was a valid reason or were valid reasons connected with the employees capacity or conduct or, based on the operational requirements of the undertaking establishment or service, for the dismissal. The Act does not require that the employer act upon grounds which are justifiable but the employer establish that there is, or are, grounds on which the dismissal could be justified, whether or not the employer acted on those grounds. Therefore, the Act requires that only the employer prove on the balance of probabilities, the possible existence of justifiable grounds for dismissal, not the actual existence of those grounds.

On the basis of what has been put in these proceedings, there is no doubt that the respondent had a genuine belief that it's business would suffer if it continued to employ the applicant. Those circumstances would have provided a valid reason for termination and therefore the obligation placed on the respondent by Section 23AA of the Act has been met (*Melissa Jaggard v. Tranby (1996) 76 WAIG 4720).*

Having made this preliminary finding the question is whether the respondent has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1995) 65 WAIG 385*. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz (1991) 71 WAIG 891* and also *Byrne v. Australian Airlines (1995) 65 IR 32*). In *Shire of Esperance v. Mouritz*, Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

In view of the circumstances of this termination of employment in this case it is necessary to deal with the question of dismissal during a probationary period. This has been examined by Senior Commissioner G L Fielding in his Reasons for Decision in *Charles William Westheafer v. Marriage Guidance Council of WA (1983) 65 WAIG 2311*. In his Reasons the learned Commissioner observed—

> *'... in most cases the failure to re-engage will not constitute dismissal for the purposes of section 29(b) of the Act, although that is not a question which arises on this occasion.[See: Ex parte Wurth (1954) 55 SR (NSW) 47, and see too: Orange City Bowling Limited and Federated Liquor and Allied Industrial Employees Union of Australia, New South Wales Branch, 1979 AR (NSW) 90.]'*

Later in the Reasons for Decision in *Westheafer* and importantly for this case it is observed that

> *'The concept of probationary employment is well known and well understood in employment law. It is that an employer by engaging someone on probation throughout the period of probation retains a right to see whether he wants the employee or not in his employment as if the employee was still in the first interview. Hence there is no obligation on the employer to even objectively consider whether or not he should re-engage an employee at the end of the probationary period. The principles associated with probationary employment are now so well established that it is sufficient to refer in passing to in re Alchin and South Newcastle Leagues Club Limited (1977) AR (NSW) 236, a case with many features in common with this one and also to the New South Wales Teachers Federation and the Education Commission of New South Wales (NSW Industrial Commission Application No. 969 of 1984; 13 September 1984), where it was pointed out that probationary employment is but a step in the selection process and should be distinguished from permanent employment [see too: Ex parte Wurth case (supra)].'*

In view of my later findings I need to discuss the concept of repudiation. Repudiation means that one of the parties of the contract evince and intension either expressly or by implication through conduct no longer to be bound by the contract. This creates a situation where repudiation by one party gives the innocent party an opportunity to affirm the contract and treat it as continuing or accept the reputation and treat the contract as at an end. The concept is discussed in The Law of Employment, *Macken, McCarry and Sappideen, 2nd Ed. The Law Book Company Limited 1984.* There the learned authors note that wilful disobedience of lawful orders may constitute grounds for summary dismissal. The disobedience must strike at the essence of the contract of employment and it must be inconsistent with the continuing relationship with master and servant.

The issue has been one of discussion in the courts for a number of years in *Adami v. Maison De Luxe Ltd (1924) 35 CLR 143* the judgements of Duffy and Starke JJ posed the test to be applied—

> *"Was the plaintiff's conduct such as justified the company in determining, and treating as at an end, his contract of service with it? If there is a distinct refusal by one party to be bound by the terms as at an end ... Short of such refusal, ... the true principle to be deduced from all the cases is that you must ascertain whether the conduct of the party who has broken the contract is such that the other party is entitled to conclude that the party breaking the contract no longer intends to be bound by its provisions. This part of the rule was laid down by Lord Blackburn [in Mersey Steel and Iron Co. v Naylor, Benzon & Co.] where he says the rule of law is that where there is a contract between two parties, each side having to do something, 'if you see that the failure to perform one part of it goes ... to the foundation of the whole, it is a good defence to say, "I am not going to perform my part of it when that which is the root of the whole and the substantial consideration for my performance is defeated by your misconduct".' Rhymmey Railway v Brecon &c. Railway."*

The refusal to obey lawful and reasonable commands may not of itself be a sustainable sole ground for dismissal. Often disobedience will be coupled with various acts of misconduct including for instance insubordination and absence for work.

During this case the Commission heard evidence from the parties and I am required to make findings concerning that evidence. There is a interesting situation arising from the evidence given by the applicant and Ms Allen. Both of them gave evidence in cross examination which conflicted to their evidence in chief and to that extent the story of each is damaged. However on fundamental issues there are not significant differences which would allow me to choose to favour one over the other. There is the need to look for corroboration. I heard from Mr Sean Clancy, I find him to be a witness of truth but he was not present at the relevant times when the events leading to the dismissal occurred and I cannot find anything in his evidence to assist me in determining the credit of each witness. Ms Pilkiw on the other hand was a witness to the events on the day. I have carefully reviewed her evidence and can find no reason to conclude that she is not a witness of truth and that being the case her story provides corroboration of the evidence given by Ms Allen about events on the day that the dismissal occurred. Therefore, where there is conflict in the evidence between the applicant and the respondent I accept the version of the respondent.

Mr Jensen argued there has been no dismissal. I find the contrary. There is documentary evidence in *Exhibit I3* that the applicant was dismissed. That her services were terminated by the respondent cannot be disputed. I previously made a finding concerning the effect of Section 23AA. There is jurisdiction to deal with this matter. The applicant had standing under Section 29 to bring an application for unfair dismissal before this Commission.

From the evidence it can be concluded that early in the employment contract the applicant and Ms Allen had a good relationship. There was a discussion between them which lead to the applicant working shorter hours. That discussion was not conducted against a background of any criticism by the respondent of the applicant's work however it is open to find, and I do, that from that time the applicant made comments in the office concerning Ms Allen's management ability. The applicant's disaffection with Ms Allen's management style continued and came to a head on 17 October 1996. It is open to find that the applicant's refusal to attend the lunch with the visitor from the eastern states was either a display of petulance or a gesture in defiance of Ms Allen's wishes. This lead to the discussion between to two women later on in the afternoon which was described by Mr Clancy as unruly. That discussion, although heated did not until its concluding stages lead to a situation where I would have found that there was any need for the respondent to do anything more than to counsel the applicant about her behaviour. However there was an event at the end of the exchange that changes the picture and calls into question the fundamental relationship. It is clear, and I find, that the applicant declared that she would not take orders from the state manager and would not continue to take orders while Ms Allen remained in the position as state manager. This then lead the Ms Allen to effect the termination. Whether Ms Allen did that in a correct manner at the time is immaterial. The termination was effected later on by letter if it did not occur then. However what the applicant had done had made it clear that she was not prepared to accept the lawful orders of the employer. Her conduct amounts to a gross repudiation of her obligations under her contract of employment. She made the repudiation, it was not accepted by the employer who terminated her services. This, on the authorities, it was entitled to do.

If I am wrong concerning the finding of unfair dismissal I note that the letter of engagement of the applicant, which she signed (*Exhibit I1*), clearly sets the contract up on the basis that there is six months probationary period. Previously in these reasons I have referred to the *Westheafer* case. In that case the learned Commissioner made the point that the applicant there would have had an entitlement to a very small amount of compensation if the dismissal had not been effected. In this matter there is a similar situation. The applicant commenced on 20 May 1996 and the contract was brought to an end on or about 17 October 1996. This means she had a little short of one month to serve before the probationary period was completed. There are two issues arising. First is that the employer would have been able to bring the contract to an end during that probationary period as if the stage of the relationship was at the first interview or in any event could have had brought the contract to an end on the basis that it was unsatisfied with the working relationship. The second point is that even if there was unfairness one would, on the basis of *Westheafer* take into account the length of the probationary period. The amount of compensation which would be assessed would be heavily influenced by the length of time remaining in the probationary period. In other words there would be very little compensation, if any, payable to this applicant if she had been unfairly dismissed taking into account also that she has received four weeks pay in lieu of notice after the termination.

In the circumstances I have described the respondent has not abused the right to terminate the services of the applicant. It is not acted in a harsh, unfair or unreasonable manner and the application will be dismissed. Finally I observe that there were claims in the original application concerning contractual entitlements allegedly not paid. These issues were not pursued during the hearing and that part of the application will also be dismissed.

Appearances: Ms J R Inkster, of counsel, appeared on behalf of the applicant.

Mr M Jensen appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anita Maria Schroeder

and

Creative Sales.

No. 1638 of 1996.

COMMISSIONER J.F.GREGOR.

2 May 1997.

Order.

HAVING heard Ms J R Inkster who appeared on behalf of the applicant and Mr M Jensen who appeared on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Karen Simpson

and

L N Price & Partners Pty Ltd t/as Busselton Freight Services.

No. 1745 of 1996.

COMMISSIONER C.B. PARKS.

27 February 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

THE facts of this matter are that Ms Simpson had been employed by L.N. Price & Partners Pty Ltd, trading as Busselton Freight Services, from 21 October 1996 to 8 November 1996 at which date she was dismissed from her employment by the respondent. On 21 October 1996 these parties entered into a written agreement with the intention that their agreement, to which they are the sole parties, be registered as a workplace agreement pursuant to the Workplace Agreements Act 1993. That agreement, was thereupon lodged with the Commissioner of Workplace Agreements so as to achieve its registration. In a letter to this Commission, dated 28 November 1996, the applicant confirms that she had entered into a workplace agreement. Enclosed with that letter was another of the same date which Ms Simpson had sent to the Commissioner of Workplace Agreements. This lastmentioned letter indicates that she no longer wished to have the agreement registered and requested that the Commissioner review the decision to do so that had been made on 13 November 1996, by his delegate.

At a conference conducted by me pursuant to s.32 of the Industrial Relations Act, 1979 (the Act) there was submitted a photocopy of a letter, dated 16 December 1996, from the Commissioner of Workplace Agreements and addressed to Ms Simpson. Therein reference is made to that Commissioner having reviewed the decision of his delegate and decided not to register the agreement because he was not satisfied Ms Simpson "..... genuinely wished to have the agreement registered". There is no suggestion therein that the decision of the delegate was reversed for any reason other than that stated. I therefore conclude that the original decision made by the delegate of the Commissioner was made in compliance with the legislated requirements for an agreement to be registered, eg such had been lodged for registration within the time prescribed under the Workplace Agreements Act 1993.

The general jurisdiction of the Commission is, pursuant to s.23(1) of the Act, but subject to what is prescribed elsewhere in the Act,—

"……to enquire into and deal with any industrial matter."

(emphasis added)

The application before me was filed in the Registry of this Commission on 26 November 1996. It seeks to invoke the jurisdiction of the Commission pursuant to s.29 of the Act, that being the primary section which provides standing to employees generally to bring an action for unfair dismissal against an employer. The material elements of that section are—

"An industrial matter may be referred to the Commission—

(a) .....

(b) In the case of a claim by an employee—

(i) that he has been harshly, oppressively or unfairly dismissed for his employment; or

(ii) .....

by the employee."

(emphasis added)

Both an "industrial matter" and an "employee" are defined in s.7(1) of the Act and in general their description encompasses the dismissal of a person from employment. However, the definition of "employee" opens with the words—

"means, subject to section 7B"

and similarly the definition of "industrial matter" opens with the words—

"means, subject to section 7C"

Sections 7B and 7C are located in "Part 1A—Effect of Workplace Agreement Act on this Act", of the Act, and s.7B there prescribes—

"Where any employer and any employee are parties to a workplace agreement, they are not in relation to one another within definitions of 'employer' and 'employee' respectively in section 7(1)."

(emphasis added)

In turn s.7C, where relevant, prescribes—

"(1) Where any employer and any employee are parties to any workplace agreement, a matter that is part of the relationship between that employer and that employee—

(a) is not—

(i) an industrial matter; or

(ii) capable of being agreed to be an industrial matter,

for the purpose of the definition of 'industrial matter' in s.7(1)."

(emphasis added)

Equally relevant is s.7A which is also contained in Part 1A and prescribes—

"Without limiting the other provisions of this Part, this Act has effect subject to the Workplace Agreements Act 1993."

Section 7 of the Act defines the term "workplace agreement" and describes such to be—

"a workplace agreement that is in force under the Workplace Agreements Act 1993."

(emphasis added)

It is therefore necessary to consider whether the agreement entered into between the parties and lodged with the Commissioner of Workplace Agreements for registration, and later refused registration, was "in force" under the Workplace Agreements Act 1993.

Section 19 of the Workplace Agreements Act 1993 deals with the commencement and duration of workplace agreements which may be of either a "collective" or alternatively an "individual" nature. Subsection (1) thereof deals with what is described as a collective workplace agreement. Subsection (2)

thereof deals with an "individual workplace agreement". An individual workplace agreement is defined at s.3 to mean—

> "..... one of the kind described in section 10 and where the context so requires means an agreement of that kind that is in force."

Section 10 deals exclusively with an agreement that is made between an employer and one of the employer's employees. That is the nature of agreement made between the parties in these proceedings and therefore, by definition, it is an "individual workplace agreement" and of the kind mentioned in s.19(2) which I now set out hereunder—

> "(2) Subject to sections 27 and 33, an individual workplace agreement has effect when it has been signed by the parties to the agreement, or from any later day provided for in the agreement."
>
> (emphasis added)

There is no suggestion that the individual workplace agreement made between the parties was to operate from a later date than the day it was signed by them which I have found to be 21 October 1996. The terms of s.19(2) are however subject to s.27 and s.33 and therefore conditioned by the terms of these sections. Hence it is necessary to determine whether their terms condition, or detract from, the words of s.19(2) in any relevant way.

Section 27 of the Workplace Agreements Act 1993 deals with an agreement which has not been lodged for registration within the prescribed 21 days. In light of what I found earlier it is therefore not a material consideration. Section 33 is headed "Position where agreement is refused registration" and, so far as is relevant, prescribes—

> "33. (1) Where an individual workplace agreement or an agreement under section 23(1) is lodged under section 29 but registration is refused by the Commissioner—
>
> (a) the agreement ceases to have effect for the purposes of this Act as from the day of that refusal;"
>
> (emphasis added)

The aforestated ss(1)(a) clearly declares that, upon a refusal by the Commissioner of Workplace Agreements to register an individual workplace agreement, such agreement ceases to have effect from the date of the refusal. That an agreement thereupon ceases to have effect is confirmation that, until the occurrence of the refusal, it has effect per the prescription of s.19(2) and is "in force" from the day the individual workplace agreement was signed.

The letter from the Commissioner of Workplace Agreements, dated 16 December 1996 and to which I have already referred, refused the registration of the individual agreement and in relation thereto declares that the agreement ".... ceases (sic) to have effect from 13 December 1996." That being the case, at the date Ms Simpson's application was filed in the Registry of the Commission, ie 26 November 1996, she was party to an individual workplace agreement in force under the Workplace Agreements Act 1993.

On a plain reading of s.7B and s.7C of the Act the respondent was not "employer", Ms Simpson was not "employee", in relation to each other, and no "industrial matter" existed. Absent the dismissal of the applicant having the character of an "industrial matter" it is therefore not a matter which falls within the general jurisdiction of the Commission as it is expressed in s.23(1) of the Act. Further, Ms Simpson, being a person who was not an "employee", had no standing to make an application to this Commission pursuant to s.29 of the Act. To the extent that it may be necessary, the application before me will therefore be dismissed.

It is apposite I record that a person employed under a workplace agreement who is dismissed is not without remedy. Section 7G of the Act empowers this Commission to enquire into and deal with a claim referred to it under that section, made by a person who had been party to a workplace agreement ie one that had been in force, and who claims to have been harshly, oppressively or unfairly dismissed from employment. However, the right of the dismissed person to access this Commission, and the jurisdiction of the Commission to deal with such a claim, depends entirely upon the relevant workplace agreement expressly providing for such a claim to, be referred to, and determined by, this Commission. In the s.32 conference conducted by the Commission the parties informed this Commission that their agreement did not so provide. Thus it is that the application made by Ms Simpson is one which fell for consideration with regard to the general jurisdiction and powers of the Commission. Clearly the matter before this Commission ought have been commenced elsewhere and pursuant to s.51 of the Workplace Agreements Act 1993.

The respondent asks that the Commission exercise its power to award costs against the applicant and claims the sum of $215.04, itemised as wages and travel costs applicable to Ms S.M. Armour, an employee of the respondent who represented the respondent at the s.32 conference held on 29 January 1997. Wages are claimed for a period of eight hours at the rate of $20.63 per hour (said to be on account of the time taken to travel from Busselton to Perth and return, and attendance at the conference) and a motor vehicle travel cost of $50.00.

Decisions abound in this jurisdiction which record it has not been a common practice of this Commission to award costs against an unsuccessful party unless there was very strong reasons to do so. I do not believe that the applicant in this matter instituted her application vexatiously but simply that she was misguided in bringing her application to this Commission. However, since the aforementioned conference the applicant has known that there was a serious challenge to her application and known the grounds thereof. In light of the matters to be decided the Commission recommended to both parties that they seek qualified advice thereon. Ms Simpson has stated that she has had medical problems and as a consequence no action was taken to seek qualified advice. The medical problem identified to the Commission was not of a nature which rendered her incapable of seeking advice, understanding such, and acting thereon. Had advice been sought and taken by her I think it very unlikely that these proceedings would have been necessary.

I understand that the wages cost in relation to Ms Armour is claimed on the basis that on the day of the conference she, although absent from work, was paid her wages for that period by the respondent and that sum the respondent seeks to recoup. Those wages are not an extra cost to the employer occasioned by Ms Simpson's application but the usual liability of the employer. There has been no direct loss evidenced and therefore no costs will be granted in relation to the wages element of the claim.

As to the motor vehicle travelling costs, that is a cost that is directly attributable to the conduct of this matter and would not have otherwise been incurred by the respondent. In the circumstances it is reasonable to grant costs for the sum of $50.00 and an order will so issue.

Appearances: Ms K. Simpson on her own behalf.

Mr B. Winburn-Clarke (of Counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Karen Simpson

and

L N Price & Partners Pty Ltd t/as Busselton Freight Services.

No. 1745 of 1996.

21 April 1997.

Order.

HAVING heard Ms K. Simpson on her own behalf and Mr B. Winburn-Clarke (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 application No. 1745 of 1996 be and is hereby dismissed; and

THAT Ms Karen Simpson pay L N Price & Partners Pty Ltd the sum of $50.00 within 21 days from the date of this Order.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robyn Walker

and

Amiritt Pty Ltd trading as The Danica Danish Bakehouse.

No. 300 of 1997.

COMMISSIONER P E SCOTT.

1 May 1997.

Reasons for Decision.

THE COMMISSIONER: This is an application pursuant to s.29(1)(b)(i) of the Industrial Relations Act, 1979 ("the Act") that the Applicant has been unfairly dismissed from her employment with the Respondent. It is noted that the application as originally filed also contained a claim for certain contractual benefits however, the application was amended by leave at the commencement of the hearing, to delete the contractual benefits claim.

The circumstances of this matter are that the Applicant was employed, commencing on Friday 22 November 1996, as a packer and was paid $12.00 per hour. She was originally to be engaged for three days per week with the hours and days per week to be varied as required. The Applicant says that no specific hours of work were discussed at the time of her engagement. She worked over a period of nine weeks. During that nine weeks, her hours varied from as little as one day of 2.5 hours (week 8) to 5 days where on one of those days she worked 7.5 hours (week 4). The days of the week upon which she worked varied from week to week and she did not work the same days in any two weeks. The starting and finishing times each day also varied. (Exhibit 1)

The Applicant's work included assisting the business's drivers who collected orders which they were to deliver and also assisting customers who came in specifically to collect their own orders. The circumstances surrounding the termination of the Applicant's employment were that on 14 January, 1997, the Respondent had taken an order from a new customer who was to collect her order the next day and she was very particular about what she wanted. The next morning the particular customer asked the Applicant for her order and the Applicant, for some inexplicable reason, was unable to find the order, however, did her best to accommodate the customer by making up a substitute order from the products which were left over. The Respondent describes these products as the "second best" products and the "left overs". It appears that the Applicant did not check through all of the invoices for the orders which had been prepared as it seems the invoice for the order was there. In any event, when Ms Amirthalingan, the owner of the business, arrived she noticed immediately the crate on the floor no more than a metre or so from the Applicant and asked the Applicant what it was. It was clear that this was the order which the customer had been seeking. She discussed the matter with the Applicant who advised her that she hadn't been able to find the order so had made up a substitute order. Ms Amirthalingan then contacted the customer who advised her that it was too late to provide her with the original order. The customer cancelled her future orders. The Respondent has since gone to considerable lengths to retrieve this customer, including at great inconvenience to Ms Amirthalingan.

The Applicant returned home from work. Later that day, she received a telephone call from the Respondent and was advised that her employment was terminated. It appears that the Respondent advised the Applicant that had it not been for this problem the employment arrangement may have continued indefinitely.

The first issue requiring consideration is the nature of the contract and whether there was a dismissal. As to the nature of casual employment, I have considered the decision of the Victorian Industrial Relations Commission in Full Session in Licensed Clubs Association; Re Higgins (1988) (30 AILR para 497) which sets out criteria for considering whether or not a particular employment contract is casual in nature. I have also considered, in particular, the decision of Fielding C, as he then was, in Squirrell and Bibra Lake Adventure World Pty Limited (1984) (64 WAIG 1834 at page 1835), where the learned Commissioner said:

> "The concept of casual employment within the common law of employment, untrammelled by award prescription, is generally taken to connote an employee who works under a series of separate and distinct contracts of employment entered into for a fixed period to meet the exigencies of particular work requirements of an employer, rather than under a single and ongoing contract of indefinite duration. Where there is an award definition of "casual employee" based on the hours of work performed, it may be that the work done thereby will be done under a single ongoing contract as mentioned in Port Noarlunga Hotel v. Stewart (South Australian Full Industrial Court, Print I.24/1981; 26th March, 1981, as yet unreported), but that depends on the definition. With respect, I agree with the observation of Olsson, P., in Stewart v. Port Noarlunga Hotel Ltd. (1980) 47 S.A.I.R. 406, at p.420, that "the essential feature of casual employment at common law is the entry by the parties into a series of specific engagements on particular occasions, at the conclusion of which neither party has any further legal employment commitments to the other", a view he had earlier expressed in Leg Trap Hotel v. Rebbeck (1979) 46 S.A.I.R. 739, and a view whith (sic) is consistent with that adopted in other industrial tribunals. Such an arrangement is to be contrasted with one whereby an employee works part-time on the basis of a single and ongoing contract. It is frequently difficult to distinguish between the two different employment relationships. There are many borderline situations and, as has often been said, the distinction between part-time and casual employment as above outlined can be very blurred, and in my opinion this is one of those cases. Ultimately, the question of whether employment is casual, in the sense of being a series of separate contracts, or permanent in the sense of being a single ongoing contract, is a question of fact, as is clearly emphasised in Doyle v. Sydney Steel Company Ltd. (1936) 56 C.L.R. 545."

It would appear that the Applicant's employment may have been covered by the Pastrycooks' Award No. 24 of 1981 although the employer cited the "Breadcarters Award". The former Award defines Casual Employee in Clause 5.—Definitions as:

> "(4) "Casual Employee" shall mean an employee engaged for no more than four weeks and working under a Contract of Service as provided in Clause 6 of this Award."

Clause 6(2) is more specific as to the conditions to apply. It says:

> "(2) Casual Employment
>
> (a) The contract of service of a casual employee may be for a maximum of thirty-eight hours per week of ordinary hours and may be terminated by either the employee or the employer giving at least one hour's notice of such termination. If an employee or an employer fails to give the required minimum notice one hour's wages shall be forfeited by the employee or paid by the employer as the case may be.
>
> (b) At the time of engagement an employee shall be notified in writing that the engagement is on a casual basis.
>
> (c) A casual employee shall not be employed for less than three hours per day and if employed for more than 7.6 hours in any one day, the employee shall be paid overtime in accordance with Clause 8.—Overtime of this Award.

(d) A casual employee shall be paid a base rate of one hundred and twenty per cent of the appropriate wage rate found in Clause 10.—Wages and Clause 11.—Supplementary Payments of this Award for the work on which the casual employee is engaged.

(e) A casual employee who has been advised to attend for work shall be paid a minimum payment of three hours pay at the casual employee's base rate.

(f) A casual employee shall not be employed for longer than four weeks without agreement between the employer and the Union."

I make no finding that this was the Award which covered the employment, but it is most likely that it was, based on the evidence before the Commission. There was no evidence as to certain aspects of the arrangements between the parties going to compliance with the Award definitions, however there is nothing to suggest that the casual employee employed pursuant to the Award could not be genuinely casual in the manner described by Fielding C. As noted earlier, the Applicant's hours of work were not regular. They varied from day to day, and from week to week. There was no guarantee of work on any given day and there was no pattern as to the number or specific days to be worked each week, the number of hours each day or week, or the starting and finishing times each day. I find that the pattern of the Applicant's employment demonstrates that her employment was by a series of engagements, not an ongoing arrangement. Although the employer advised her upon termination that she might otherwise have expected to continue the arrangement indefinitely, there was no ongoing contract. Until advised of the employer's view, which was raised after the event, there could have been no expectation of ongoing employment, beyond each engagement. There was no evidence to indicate if and when the Applicant was to work again, after 15 January 1997, her last day of work. I find that the Applicant's employment was genuinely casual, as evidenced by the days and hours actually worked, and the lack of a regular pattern of work.

The contract, being for the particular day, ended when the Applicant concluded work on the day of the incident. There was no obligation on the part of the employer to continue to employ the Applicant. It simply did not offer her further work. On this basis, I find that there has been no dismissal, the daily contract simply came to its conclusion. This being the case, the application will be dismissed.

APPEARANCES: Mr R Clohessy on behalf of the Applicant

Ms V Matthews on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robyn Walker

and

Amiritt Pty Ltd trading as The Danica Danish Bakehouse.

No. 300 of 1997.

COMMISSIONER P E SCOTT.

1 May 1997.

Order.

HAVING heard Mr R Clohessy on behalf of the Applicant and Ms V Matthews on behalf of the Respondent 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.

Steve Worton

and

La Cava Nominees Pty Ltd t/a Interceramics.

No. 1825 of 1996.

Zbigniew Michael Mach

and

La Cava Nominees Pty Ltd t/a Interceramics.

No. 14 of 1997.

La Cava Nominees Pty Ltd t/a Interceramics

and

Zbigniew Michael Mach and Steve Worton.

No. 176 of 1997.

COMMISSIONER C.B. PARKS.

11 April 1997.

Reasons for Decision.

Mr Worton has before the Commission an application alleging that he had been unfairly dismissed from employment with Interceramics on 7 December 1996. In remedy thereof Mr Worton seeks reinstatement in employment and an order for the payment of certain monies. The Commission convened a conference pursuant to s.32 of the Industrial Relations Act, 1979, (the Act) on 23 January 1997, in an attempt to have the parties conciliate upon the matters raised in the application. Interceramics objected tojurisdiction on two counts, one of which is material to these reasons, ie that there had been no employee and employer relationship between Mr Worton and Interceramics at the time alleged. It is asserted that at the material time Mr Worton had been employed by Zbigniew Michael Mach who, trading as Mach Marble and Granite, had a written sub-contract for service with Interceramics.

During the course of the aforementioned conference Mr Mach sought permission to attend the conference and, with the express consent of the parties, was permitted to attend and participate in discussions which followed. It was there revealed that the alleged sub-contract relationship between Mr Mach and Interceramics had been terminated by Interceramics on 7 December 1996. And, further, Mr Mach claims that he had been an employee who was unfairly dismissed. The Commission was then informed that Mr Mach had also filed an application in the Registry of the Commission alleging that he had been an employee of Interceramics and that he had also been unfairly dismissed from that employment on 7 December 1996.

In view of the challenge made to the jurisdiction of the Commission the aforementioned s.32 conference was concluded and, subject to Mr Worton deciding whether he wished to proceed further with his application and advising the Commission of his intention with 14 days from the date of the conference, he having been equivocal during the conference, the matters of jurisdiction were to be listed for hearing and determination

On 30 January 1997 the application which had been filed by Mr Mach (No. 14 of 1997), and mentioned in the s.32 conference held in relation to the application of Mr Worton, was also allocated to the Commission as presently constituted by the Chief Commissioner pursuant to his powers under the Act. At that same date a separate application (No. 176 of 1997) made by Interceramics and seeking that the applications filed by both Messrs Worton and Mach be joined and heard together, was similarly allocated to the Commission as presently constituted.

On 7 February 1997 the Commission caused letters to be sent to Messrs Worton and Mach requesting that, by 14 February 1997, they advise in writing whether they objected or agreed to the application of Interceramics that their applications be joined and heard together. As 14 days had elapsed since the s.32 conference had been held and nothing had been heard from Mr Worton during that period, the letter to Mr Worton also reminded him that he had been directed to advise the Commission as to whether or not he wished to proceed to hearing with his application.

A letter from Mr Worton was received in the Commission on 12 February 1997 which revealed that he had misunderstood what had taken place at the s.32 conference and in the light of that understanding he declared that he had decided to "....proceed with the claim through the Local Court...". On the same date the Commission caused a letter to be forwarded to Mr Worton explaining that he had misunderstood what had taken place at the s.32 conference and questioning whether his reference to proceeding through the Local Court was an indication of an intention to discontinue his application before the Commission.

By 17 March 1997 Messrs Worton and Mach had failed to inform the Commission in writing as had been requested, or in any manner at all, whether they objected or agreed to their applications being joined and heard together. The Commission reached the preliminary conclusion that the matters of jurisdiction ought initially be listed for hearing conjointly. On the immediately aforementioned date, notices of hearing were forwarded to Messrs Worton and Mach advising there would be a conjoint hearing on 7 April 1997.

At the commencement of proceedings on 7 April 1997 the Commission afforded Messrs Worton and Mach the opportunity to be heard on whether the Commission ought continue and hear together the issues of jurisdiction. Mr Worton did object, Mr Mach did not. The Commission being satisfied; the two applications raised common matters of jurisdiction; they involve several common and also related facts; they arise out of the same job of work and its location; inter-relationships between the several parties are involved; and that the applicants would not be prejudiced by a joint hearing, the Commission therefore decided to proceed and hear the jurisdictional arguments jointly. For the reasons which follow I do not elaborate in any further detail my reasons for so deciding.

Messrs Worton and Mach put very scant arguments to the Commission regarding the employee status they allege they had held with Interceramics. After hearing the submissions made on behalf of Interceramics and upon the completion of examination in chief of Ms Angela La Cava, a Director of the company trading as Interceramics, Mr Worton declined the opportunity to cross examine and announced that he did not wish to continue further with his application before the Commission, and further, that it was his wish to pursue his grievances with Interceramics through the Local Court. In view of the nature of the proceeding before the Commission, and the timing of Mr Worton's request to discontinue his application, the Commission asked if he had so acted because he had become satisfied that he had not been an employee of Interceramics. Mr Worton responded in the affirmative. The agent for Interceramics consented to the application by Mr Worton being discontinued and the Commission thereafter announced to the parties that leave to discontinue application No. 1825 of 1996 was granted and that such would be so ordered.

Following upon the disposition of Mr Worton's application Mr Mach also declined his opportunity to cross examine Ms La Cava and announced that it was also his wish to pursue his grievances with Interceramics through the Local Court. The clear indication from Mr Mach was that his application before the Commission ought be ended however he expressed no view as to the method of its disposition. The agent for Interceramics objected to the application being concluded by the Commission except by way of a determination of whether, according to the written contract between Mr Mach and Interceramics and the associated documents (exhibits L1 and L2), he had been an employee or a sub-contractor. The Commission was told that a determination of the matter would be relevant to the resolution of a matter involving Interceramics and another person where the issues of employee versus sub-contractor also exist. It may be that Interceramics and this other person are party to a written agreement which is fundamentally the same as that which applied to Mr Mach however whether that person is an employee, or a sub-contractor, will depend on the precise terms of the agreement and how the parties thereto conducted themselves. In practical terms, a determination of the matter of jurisdiction has become moot in relation to the matter before the Commission and therefore it is appropriate that it be concluded without deciding the issue of jurisdiction. Application No. 14 of 1997 ought therefore be dismissed and I will order accordingly.

Appearances: Mr S. Worton appeared on his own behalf.

Mr Z.M. Mach appeared on his own behalf.

Ms S. Laferla appeared on behalf of La Cava Nominees Pty Ltd t/a Interceramics.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Steve Worton

and

La Cava Nominees Pty Ltd t/a Interceramics.

No. 1825 of 1996.

11 April 1997.

Order.

HAVING heard Mr S. Worton on his own behalf and Ms S. Laferla on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be and is hereby wholly discontinued.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Zbigniew Michael Mach

and

La Cava Nominees Pty Ltd t/a Interceramics.

No. 14 of 1997.

11 April 1997.

Order.

HAVING heard Mr Z.M. Mach on his own behalf and Ms S. Laferla 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.

La Cava Nominees Pty Ltd t/a Interceramics

and

Zbigniew Michael Mach and Steve Worton.

No. 176 of 1997.

7 April 1997.

Order.

HAVING heard Ms S. Laferla on behalf of the applicant and Mr Z.M. Mach on his own behalf and Mr S. Worton on his own behalf, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, having on this day issued an oral order such order is hereby reduced to writing and it is ordered:

THAT application Nos. 1825 of 1996 and 14 of 1997 be and are hereby joined to be heard together.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Hamersley Iron Pty Limited.

No. CR 72 of 1997.

COMMISSIONER A.R. BEECH.

22 April 1997.

Reasons for Decision.

THE COMMISSIONER: The union in this matter claims that train drivers covered by the Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Award 1987 should receive meal vouchers when rostered to perform mainline work irrespective of whether or not they travel out and perform mainline work.

The issue arises in this way. There are five train drivers covered by the award. Prior to the 6th January 1997 they were rostered to perform, and did perform, mainline work. Pursuant to Clause 8 of Division 1—Part 2 of the award train drivers operating an ore train, planned mainline construction train, freight train or banker engines are supplied with a food voucher to the value of $22.50. They were supplied with food vouchers. On the 6th January 1997 a new rail schedule applicable to staff enginemen came into effect. This meant that the five train drivers would not be rostered to work on the mainline. With perhaps two exceptions since then the five train drivers have performed work other than mainline work. However the five train drivers are still being paid according to their roster for mainline work. I understand that this is a "status quo" arrangement pending the arbitration of differences between the parties regarding rosters for the five train drivers. They have not received food vouchers since that date.

The union called evidence from Mr Daniel Daniel, a train driver with the company for 24 years. He informed the Commission that prior to 1990 train drivers were supplied with an esky of food for their mainline work. In 1990 this was changed to a system whereby the train drivers supplied their own food and were given a food voucher to the value of $20.00. His evidence is that the food voucher was given whether he "went up the track" or not. He received a food voucher when on stand-by. He received it when on a training course. In 1996 he received the voucher on 18 occasions when he did not do mainline work. Food vouchers were given to the members of the "cab committee" upon their return to the site for the trips they would have done had they worked their rosters, even though they obviously did not work on the mainline while they were away. It is his evidence that the food vouchers "go with the job". In 1996 he received 113 food vouchers with a value of some $2500. It represents a significant part of his regular income.

Mr Daniel agrees with the company that there is a practice that a food voucher would not be supplied if the company gave him seven days' notice that the mainline job would not be done. He also concedes that he was told prior to the 6th January that he would not be running trains on the mainline. He has been coming prepared with food for the eventuality in any event. However I accept from his evidence that the seven days' notice practice was such a rare event that he could not even remember the last occasion when it happened. When it did happen he would not get paid according to his roster for that occasion but the job would be changed to another day and he would do the job, and get the voucher, on that other day.

I accept that the wording in the award restricts the payment of the voucher to train drivers when operating on the main line. However it is not the purpose of these proceedings to enforce the award. It is to decide on the basis of equity, good conscience and substantial merit whether food vouchers should continue to be given to the five train drivers in these circumstances. The evidence does support Mr Daniel's assertion that the food vouchers "go with the job": they are given when the train driver is on stand-by, when on training and even, apparently, to train drivers for periods when they are not on site but would have worked on mainline work. I am unaware of any situation when the train drivers are paid according to their roster that the food voucher is not also given to them.

I also accept that there is a practice where food vouchers are not paid where seven days' notice is given to a train driver that the job would not be done. However I am not convinced it is directly relevant to the current unusual situation. The practice happened so rarely that Mr Daniel could not remember the last time it had occurred. When it did occur it was for a single job. The train driver would not be paid according to the roster and the food voucher would not be paid. However, the job was re-scheduled for another day so the job would be "picked up later". The practice does not seem to be directly applicable here where the five train drivers are still regularly being paid according to their roster but regularly told they will not be required to operate on the mainline.

The company cannot see any merit in paying food vouchers to reimburse train drivers who are not presently required to do mainline work for purchasing food for the trip. If the only considerations were the wording of the award and the nature of reimbursement then their argument would be unassailable. The evidence of Mr Daniel adds another dimension to the issue. The practice of the vouchers being paid at times other than when a train driver has operated on the mainline, as detailed in his evidence, means in fairness that the issue is broader. There is more here than the award wording and the reimbursement nature of the food vouchers.

The current situation is that the five train drivers are being paid according to their roster although they are not required to work on the mainline. The evidence is that when train drivers were paid according to their roster they would receive a food voucher whether they actually operated on the mainline or not. Therefore the food vouchers should still have been given while the five train drivers are being paid according to their roster. If and when they are not paid according to their roster then they would not be given the food vouchers.

This conclusion is not an endorsement by the Commission of the practice. The Commission is not being asked to endorse the practice. The conclusion is the fair resolution of the issue while the current situation continues, given the parties' own practice attaching to the food vouchers. The parties ought, in my respectful observation, give consideration to practices such as this being discussed in negotiations for an Enterprise Bargaining Agreement.

A minute of proposed order now issues.

Appearances: Mr M. Clark on behalf of the applicant.

Mr A. Cameron on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Hamersley Iron Pty Limited.

No. CR 72 of 1997.

28 April 1997.

Order.

HAVING heard Mr M. Clark on behalf of the applicant and Mr A. Cameron on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT meal vouchers be given to the five train drivers from the 6th day of January 1997 while they are being

paid according to their roster even though they are not being required to work on the mainline.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

CORRECTIONS—

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 and Others.

No. 1331(A) of 1996.

Enrolled Nurses and Nursing Assistants (Government) Award.

No. R7 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

6 May 1997.

Correcting Order.

WHEREAS an error occurred in the drafting of the above Order dated 11 December 1996, published in the Western Australian Industrial Gazette on Wednesday 22nd January 1997, Volume 77, Part 1, Sub-part 1, Page 239, the following correction is made—

1. Delete instruction 4(b) and replace with the following—

   (b) Delete the amounts of $14.25, $21.40 and $28.50 in subclause (11) and insert in lieu thereof the amounts of $15.00, $22.50 and $30.00 respectively.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

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.

10 April 1997.

Correcting Order.

WHEREAS on the 21st day of February 1997, an order in this matter was deposited in the office of the Registrar; and

WHEREAS the said order had an error in 2(B) subclause (4) titled Minimum Wage Rates; and

WHEREAS the order should have read:

(4) Minimum Wage Rates

Notwithstanding the provisions of this award, no employee (excluding 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.

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the order should be corrected as above.

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

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ann Little

and

Illyarrie Nominees Pty Ltd trading as Goddard Real Estate.

No. 1524 of 1996.

COMMISSIONER P E SCOTT.

21 April 1997.

Order.

1. The Respondent shall provide to the Applicant no later than 5.00pm on Thursday, 24 April 1997 a statement of all payments made to her during her employment with the Respondent.

2. The Respondent shall provide to the Applicant, forthwith, a copy of each Offer and Acceptance written by her in her employment with the Respondent with the exception of that relating to 148 Stoneham Road.

Should the Applicant otherwise obtain a copy of the Offer and Acceptance relating to 148 Stoneham Road she shall provide a copy to the Respondent prior to the hearing of application 1524 of 1996 on 1 May 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Patricia Anne Edwards

and

Merisel Pty Ltd.

No. 1559 of 1996.

COMMISSIONER R.N. GEORGE.

14 April 1997.

Reasons for Decision.

THE COMMISSIONER: On 29 October 1996, the Applicant in these proceedings filed an Application No. 1558 of 1996 claiming unfair dismissal and seeking orders pursuant to S.29(1)(b)(i) and (ii) of the Industrial Relations Act, 1979 (hereinafter referred to as "the State Act). The Application related to a termination which took effect on 8 March 1996 and therefore was well outside of the 28 days prescribed pursuant to

S.29(2) of the State Act for the making of applications under S.29(1)(b)(i). For this reason, a second Application was filed pursuant to S.29(b)(iii) of the State Act for an extension of the time in which a referral may be made by an employee under S.29(1)(b)(i). S.29(3) of the State Act confers a discretion on the Commission to effect an extension of time for referring a claim of this type 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 170 EA 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 peculiarities of S.29(3) of the State Act and the manner in which it should be interpreted has been discussed in Robinson v Kraft Foods Ltd (1997) (77 WAIG 259); Graham v Comlec (WA) Pty Ltd (1996) (76 WAIG 3775); and Wilcox v Makfren Holdings Pty Ltd t/a Circuit Technology (1995) (61 IR 420 at 47). It is not necessary to repeat that discussion here. Suffice it to say that I respectfully agree with the views expressed therein that power derived from S.29(3) of the State Act is a discretionary power directed to the need for justice to be done between the parties having regard for such considerations as—

- the history of proceedings;
- the conduct of the parties;
- the nature of the litagation; and
- the consequences for (or prejudice to) the parties of the granting or not granting such an application.

Ms Saracini for the Respondent submitted that the Commission is also bound to take into account whether the Applicant has an acceptable explanation for the delay in initiating proceedings (Hunter Valley Developments Pty Ltd v Cohen (1984) (3 FCR 344, 348) and the merit of the matters advanced by the Applicant in support of the Application for an extension of time (Hudson v Princetown Pty Ltd (unreported) Industrial Relations Court Decision delivered 8 August 1994), although in my view these matters are encompassed in the considerations listed above and are conditioned by the wording of the State Act.

It is common ground between the parties that the termination the subject of Application 1558 of 1996 is also the subject of a current application under S.170EA of the Industrial Relations Act 1988 (now the Workplace Relations Act 1996 and hereinafter referred to as "the Commonwealth Act"). No question of the validity of the Application under the Commonwealth Act is raised so the matter is open for consideration by the Commission pursuant to S.29(3).

The grounds upon which the Application for an extension of time is made are set out in the Application in the following terms.

"1. The termination is the subject of proceedings in the Industrial Court of Australia, No. WI96/1360.

2. As a consequence of Victoria et al v Commonwealth, No. M46 of 1994, the remedy available pursuant to the Industrial Relations Act 1988 (Commonwealth) is inadequate."

While it is said in ground 2. that the remedy available pursuant to the Commonwealth Act is inadequate, this was qualified in the submissions of Ms Crawford on behalf of the Applicant by the concession that the remedies available under the State and Commonwealth Acts are in fact similar but that the decision in Victoria and Others v The Commonwealth (1996) (ALJR 680) (hereinafter referred to as "the Victoria decision"), which rendered various parts of the Commonwealth Act invalid, including relevantly S.170 DE(2), had substantially narrowed the basis upon which the Applicant may now argue the lawfulness of the employer's actions.

To illustrate the point Ms Crawford referred to Section 23AA(2)(b) of the State Act which provides that if "the employee establishes that, whether or not it is justified, the dismissal is harsh, oppressive or unfair, the claim is taken to have been established" and submitted that because of the Victoria decision an argument based on similar grounds is not now available under the Commonwealth Act.

The history of proceedings is set out in a chronology of events forming part of a written outline of the Applicant's submissions provided to the Commission by Ms Crawford. This chronology, as amended in the course of proceedings, is in the following terms.

"8/3/96	Date of termination
29/3/96	Application filed in the Australian Industrial Relations Commission
16/5/96	First AIRC Conciliation Conference
19/7/96	Conference in Australian Industrial Relations Commission
29/8/96	Formal written offer put by Applicant's solicitor to Respondent's solicitor.
4/9/96	Decision in Victoria and Others v The Commonwealth (1996) ALJR 680.
26/9/96	Directions Hearing, Industrial Relations Court (orders made for summaries of facts to be filed and listed for hearing on 8 November 1996)
28/10/96	Receipt of offer acknowledged by Respondent's solicitor.
29/10/96	Applications, for extension of time and substantive, filed in Western Australian Industrial Relations Commission
30/10/96	Directions Hearing (by telephone)—Industrial Relations Court, (hearing date 8/11/96 vacated)
18/11/96	Respondent files Answer and Counterproposal, WAIRC.
November/ December/ January 1997	Discussion and correspondence (13/11/96, 30/12/97, 24/l/97, 31/l/97) between parties solicitors re evidence of key witness, Mr. Patrick Woods former Managing Director of the Respondent (tender Respondent's solicitor's letter dated 13/11/96.
31/l/97	Directions Hearing (telephone) vacated by Applicant's solicitor to avoid unnecessary costs to parties
31/l/97	Respondent's solicitor requested to advise whether application for extension of time opposed.
13/2/97	Respondent's solicitor advises Respondent does not consent to extension of time.
14/2/97	Preliminary hearing—Western Australian Industrial Relations Commission—neither Respondent nor Respondent's solicitor appear. Direction made to list the extension of time application for hearing.
18/2/97	Liaison between Applicant's solicitor and Commission staff re date for hearing of extension of time application.
13/3/97	Directions Hearing (telephone), Industrial Relations Court, (directions made, at insistence of Respondent's solicitor in W.A., opposed by Applicant's solicitor, for filing of summaries of cases by parties and matter listed for hearing on 16-17 June)"

[Application for Extension of Time—outline of Applicant's submissions]

In the context of these events it was argued for the Applicant that there had been no undue delay in prosecuting the case and that the need to pursue a remedy through the Western Australian Industrial Relations Commission had been brought about by circumstances over which the Applicant had no control (i.e. the Victoria decision). The Respondent on the other hand argued that there had been no or any acceptable explanation for the Applicant's delay in filing her dismissal action in the State Commission following the Victoria decision. The Victoria decision was handed down on 4 September 1996 and the substantive Application, together with the Application now under consideration, were filed in the State Commission on 29 October 1996, approximately 8 weeks later. While in other

circumstances such a delay may be persuasive in finding against an application for an extension of time, in the present matter I do not believe that the delay provides sufficient cause for such a finding, particularly when considering the history of the proceedings and the fact that a formal written offer to settle the claim was put to the Respondent through its solicitor on 29 August 1996 which remained open at least until 28 October 1996 when the Respondent's solicitor verbally acknowledged its receipt. There were also discussions and correspondence during November, December of 1996 and January of 1997 which, it was submitted, proceeded on the basis that they might still lead to a settlement of the claim.

The fact that Applications are on foot in both the State and Australian Commissions can not be said, as argued for the Respondent, to be an exercise in "forum shopping". The fact is that an Application of the sort now under consideration can not be brought unless a valid Application is in existence before the Australian Industrial Relations Commission. In order to put that argument to rest, however, the Applicant gave evidence that should the extension of time sought by this Application be granted, steps would be immediately taken to end proceedings before the Australian Industrial Relations Commission.

To grant the request for an extension of time would not, in Ms Crawford's submission, cause prejudice to the Respondent as the Respondent will in the end have to face the same case (excepting the effect of the Victoria decision) irrespective of whether the matter proceeds in the State or Australian Industrial Relations Commission. In this circumstance, it was submitted, there is little substance in the argument that to allow an extension of time would cause prejudice to the Respondent through the duplication of actions. On the other hand it was argued that the Applicant would suffer significant prejudice if the Application for an extension of time is refused because she would have no option but to proceed in a jurisdiction where she would be limited in the argument which could be presented in support of her claim.

According to Ms Saracini for the Respondent, there would be no prejudice to the Applicant if the extension of time was refused because despite the Victoria decision and its effect on S.170DE(2) of the Commonwealth Act, there is still ample scope to take into account whether the termination was harsh, unjust or unreasonable. This, it was submitted, is demonstrated by the approach adopted by Judicial Registrars in the Federal jurisdiction and is supported by the authorities in Selvachandran v Peteron Plastics Pty Ltd (62 IR 371) and Kenefick v Australian Submarine Corporation Pty Ltd (No 2) (65 IR 366). The first mentioned matter considered the distinction between the requirements of S.170DE(1) and (2) of the Commonwealth Act and the second considered the application of SS170DC, 170DE and 170EDA in circumstances where there is a pool of employees eligible for redundancy and selection from that pool is based upon performance or conduct.

In the Selvachandran case Northrop J expressed accord with the opinion of Wilcox CJ in Gibson v Bosmac Pty Ltd (60 IR 1) and went on to say.

> "His Honour the Chief Justice discussed s 170DE(2) under the heading "Substantive fairness". *With respect, for reasons already expressed, the question of substantive fairness arises only after a finding has been made that the employee has established a valid reason or reasons under s 170DE(l).* Under this heading, his Honour discussed the question of the construction and application of s 170DE(2) and in that discussion expressed the opinion:
>
> > "In this situation, it seems to me that Mr Ehsman, and anyone else who was involved in the decision to terminate Mr Gibson s employment, was entitled to reason that, if Mr Gibson was not prepared to explain any difficulty he had in working on a Saturday, in the circumstances it was better to dispense with his services. That decision was based on a valid reason based on the operational requirements of the respondent's business. 'The limitation imposed by subs (1) of s 170DE was satisfied. And, having regard to the size and nature of the respondent's business, it seems to me the decision was not harsh, unjust or unreasonable."
>
> Implicit in this discussion is the view that the adjective "valid" when used in s 170DE(l) is to be given a meaning similar to the meaning I would give to it as set out earlier in these reasons. In coming to his conclusion on this aspect, his Honour had regard to the nature of the employer's business and the need for the employer to provide services to its customers. A refusal by the employee to work the overtime directed, without saying why, was relevant both to the issue of a valid reason and to substantive fairness under both the subsections of S 170DE. *I do not necessarily disagree with this approach but normally the issue of whether a reason for termination is valid or not should be considered primarily from the employer's perspective while the substantive fairness issue should be considered primarily from the employee's perspective even though the perspective of the employer may be of importance also. The differing onus of proof provisions support this approach*."
>
> [Supra at 374—My emphasis]

It is evident from what is said above, in my view, that the invalidation of S.170DE(2) of the Commonwealth Act narrows the basis upon which the Applicant is now able to challenge the termination of her employment with the Respondent and that the test of validity referred to in S.170DE(1) does not, as contended by Ms Saraceni, necessarily provide the scope to overcome that consequence.

In respect of the Kenefick case, Ms Saracini submitted that if the Applicant in the present matter had in fact been terminated, and that is not conceded, then she had been so because of operational requirements of the Respondent involving redundancy and on the authority in Kenefick that brings into play S.170DC of the Commonwealth Act and the ability of the Applicant to challenge the fairness of the Respondent's actions (without resort to S.170DE(2)). It is clear from the Kenefick decision, however, that whether or not S.170DC applies will depend upon the particular circumstances of the case and that S.170DC will not apply to all redundancies. In that respect the Court said.

> "It is for the employer to choose the basis for selection for redundancy from the pool of eligible employees. It is only if the employer chooses by reference to conduct or performance criteria that s 170DC will apply."
>
> [Supra at 372]

There is no evidence before the Commission in these proceedings that would indicate that the circumstances in which the Applicant's services were terminated are of the sort referred to in the Kenefick decision and in my view neither Kenefick nor Selvachandran assist the Respondent in the argument that the Applicant would not be prejudiced if the application for extension of time were to be refused.

On balance, having considered the positions of both the Applicant and the Respondent, I am of the view that the greater prejudice would be suffered by the Applicant if the Application for an extension of time was to be refused. In so finding I have taken into account the Respondent's submissions about the availability of witnesses and the effect on their recollection of events due to the passage of time since the termination took effect. This will be a factor, however, that will impact irrespective of whether the matter proceeds in the State or Australian Industrial Relations Commission.

Finally, Ms Saracini for the Respondent argued that while the only remedy being sought by the Applicant in this Commission which would not be open to her if the present Application were to be refused is a remedy based on her claim of alleged unfair dismissal, she is not seeking re-instatement and that is the primary remedy available under S.23A(1)(b) of the State Act. The alternative of compensation is not, as correctly submitted by Ms Saracini, something the State Commission can grant as of right (See S.23A(1a)) and the further claim for alleged denied contractual benefits is a remedy open to her in the State Commission notwithstanding the outcome of the present Application. This, in my view, is a matter for any substantive hearing and does not assist the argument against the Application for an extension of time.

Taking all of the submissions and evidence into account I have concluded that the Application should be granted. This conclusion will be reflected in an order to that effect.

Appearances: Ms C.P. Crawford on behalf of the Applicant
Ms M. Saracini on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Patricia Anne Edwards

and

Merisel Pty Ltd.

No. 1559 of 1996.

COMMISSIONER R.N. GEORGE.

14 April 1997.

Order.

HAVING heard Ms C. Crawford (of Counsel) on behalf of the Applicant and Ms M. 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 the time for filing of application No. 1559 of 1996 be extended to 29 October, 1996.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Harold Anthony Smith

and

Sedgwick Ltd.

No. 269 of 1997.

SENIOR COMMISSIONER G.L. FIELDING.

9 April 1997.

Order.

HAVING heard Mr J. Long on behalf of the Applicant and Mr N. McQuire 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 do provide further and better discovery in accordance with the Applicant's request for further and better discovery dated the 25th March 1997, by 5.00 pm on Friday, 11th April 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cara Muir

and

EGB Nominees Pty Ltd trading as Rottnest Hotel.

No. 475 of 1997.

COMMISSIONER P.E. SCOTT.

15 April 1997.

Order.

WHEREAS this is an application by Cara Muir for the production of documents in accordance with the Industrial Relations Act, 1979; and

WHEREAS an in-chambers conference was convened on the 12th day of March 1997; and

WHEREAS the parties came to agreement with respect to the production of documents at that conference;

NOW THEREFORE, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this application be, and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kylie Michelle Veasey

and

Co-Ordinated Corporation Pty Ltd.

No. 544 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

15 April 1997.

Order.

HAVING heard Mr N. Pakes on behalf of the Applicant and Mr G. Sunderland 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 shall by the close of business on 16th April 1997 provide to the Commission (by facsimile if convenient) a copy of the index of the "Company Manual" and extracts from the manual of provisions that cover the requirements of an employee and the employer when notice of termination of employment is initiated by the employee and when employment is terminated by the employer by dismissal.

The Commission will retain and maintain the confidentiality of the index of the Company Manual and will not release it to the Applicant unless it is considered that there is a provision which is relevant to the expeditious hearing of the matter but then not until the Respondent has had an opportunity to be heard.

On receipt of the provisions of the manual that relate to termination of employment by notice and dismissal the Commission will transmit by facsimile to the Applicant the copy received form the Respondent pursuant to this Order.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

George Manios

and

Property Headquarters Pty Ltd.

IN THE MATTER of an application for reduction of time in which an answering Statement in Application No. 812 of 1997 is to be filed in the Commission.

No. 812 of 1997.

COMMISSIONER J.F. GREGOR.

7 May 1997.

Order.

WHEREAS on the 30 April 1997 George Manios filed in the Commission Application No. 812 of 1997 alleging that he had not been allowed a benefit to which he is entitled under his contract of service; and

WHEREAS an application has been made by George Manios for a reduction in the time for filing of a Notice of Answer and Counter Proposal in accordance with the Industrial Relations Act, 1979 in the said application; and

WHEREAS on the 7 May 1997 the Commission conducted a conference exparte to deal with the application; and

WHEREAS at the said conference the Commission decided that the application would be granted and the respondent Property Headquarters Pty Ltd would be given seven (7) days in which to file a Notice of Answer and Counter Proposal in Application No. 812 of 1997;

NOW THEREFORE pursuant to the powers conferred on it under the Industrial Relations Act, 1979 the Commission hereby orders—

(1) THAT George Manios shall forthwith serve a copy of this order on Property Headquarters Pty Ltd together with a copy of Application No. 812 of 1997.

(2) THAT when service has taken place in accordance with (1) above George Manios file in the Registry of the Commission a Declaration of Service thereof.

(3) THAT a Notice of Answer and Counter Proposal to the claim in Application No. 812 of 1997 lodged with the Commission on 30 April 1997 shall be lodged with the Commission and a copy thereof served upon George Manios within seven (7) days from the date of service of this order.

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

NOTICES—
Appointments—

APPOINTMENT

ADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the Industrial Relations Act, 1979, hereby appoint, subject to the provisions of that Act, Commissioner A.R. Beech to be an additional Public Service Arbitrator for a period of one year from 25th March, 1997.

Dated the 25th day of March, 1997.

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

APPOINTMENT.

ADDITIONAL PUBLIC SERVICE ARBITRATOR.

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the Industrial Relations Act, 1979, hereby appoint, subject to the provisions of that Act, Commissioner C.B. Parks to be an additional Public Service Arbitrator for a period of one year from 25th March, 1997.

Dated the 25th day of March, 1997.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

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

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the

Cleaners and Caretakers Award 1969, No. 12 of 1969

namely

Bird Cameron Chartered Accountants

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 173 on all correspondence.

Dated 17 April 1997.

(Sgd.) J. G. CARRIGG,
Registrar.

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the—

1. Clerks (Public Authorities) Award 1987 No. PSA A 7A of 1987
2. Enrolled Nurses and Nursing Assistants (Government) Award No. R7 of 1978
3. Miscellaneous Government Conditions and Allowances Award No. A4 of 1992

namely—

Western Australian Meat Commission

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the awards apply.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Parts 180, 182 & 183 on all correspondence.

Dated 30 April 1997.

J.G. CARRIGG,
Registrar.

NOTICE

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to cancel out the following award, namely the:

Hospital Salaried Officers (Red Cross Social Work Service)
Award 1978, No. R 17A of 1974

on the grounds that there are no longer any persons employed under the provisions of that award.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 686 of 1977 Part 155 on all correspondence.

Dated 9 May 1997.

J.G. CARRIGG,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to cancel out the following award, namely the:

Nurses (Private Hospitals) Award No. 1 of 1966

on the grounds that there are no longer any persons employed under the provisions of that award.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 686 of 1977 Part 153 on all correspondence.

Dated 9 May 1997.

J.G. CARRIGG,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the

Pastrycooks Award No. A24 of 1981

namely

1. Peters Ice Cream W.A. Ltd

2. SHRM (Aust) Pty Ltd

3. Swan Lake Pavlova

4. Garis Bakery

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 149 on all correspondence.

Dated 17 April 1997.

(Sgd.) J. G. CARRIGG,
Registrar.

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the **Saddlers and Leatherworkers Award No. 7 of 1962** namely—

1. Mallabones Pty Ltd
2. J.L. Burley Pty Ltd

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 155 on all correspondence.

Dated 30 April 1997.

J.G. CARRIGG,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No. R32 of 1976 namely:

1. Lynas Bernville Pty Ltd
2. Mazal Tov Pty Ltd

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Parts 192 and 193 on all correspondence.

Dated 13 May 1997.

J.G. CARRIGG,
Registrar.

AWARDS/AGREEMENTS—Consolidation by Registrar—

BUILDING AND ENGINEERING TRADES (NICKEL MINING AND PROCESSING) AWARD, 1968

No. 20 of 1968.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 13th day of May, 1997

J. CARRIGG,
Registrar.

"Building and Engineering Trades (Nickel Mining and Processing) Award, 1968"

1.—TITLE

This award shall be known as the "Building and Engineering Trades (Nickel Mining and Processing) Award, 1968".

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
1A. Statement of Principles—March 1996
2. Arrangement
3. Term
4. Area and Scope
5. Rates of Wages
6. Junior Employees
7. Hours (Other than Continuous Shift Employees)
8. Overtime (Other than Continuous Shift Employees)
9. Continuous Shift Employees
10. Rest Period after Overtime
11. Shift Work
12. Absence through Sickness
13. Holidays
14. Annual Leave
15. Casual Employees
16. Free Water
17. Drinking Water
18. Mixed Functions
19. Change Rooms
20. Reduction of Hands
21. Accident Pay
22. Contract of Service
23. Payment of Wages
24. Underground Employees
25. First Aid
26. Resumption of Work After Annual Leave
27. Structural Efficiency and Award Modernisation
28. Aged and Infirm Employees
29. Board of Reference
30. Special Rates and Provisions
31. Representative Interviewing Employees
32. Recognised Crib Places
33. Record
34. Inspections
35. Re-employment after Accident
36. Long Service Leave
37. District Allowances
38. Maximum Rate
39. Apprentices
40. Bereavement Leave
41. Jury Service
42. Maternity Leave
43. Training
44. Rates of Pay and Classification Definitions

Appendix—Resolution of Disputes Requirement
Appendix One—Old Definitions and Classification Groups
First Schedule—District Allowances
Second Schedule—Parties to the Award
Appendix—S.49B—Inspection Of Records Requirements

3.—TERM

The term of this award shall be for a period of one year from the beginning of the first pay period commencing on or after the date hereof.

4.—AREA AND SCOPE

This award shall apply to the nickel mining and processing industry and shall operate over the Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North Coolgardie, North-East Coolgardie, Mt. Margaret, East Murchison Goldfields and the Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields and the area outside those goldfields in Western Australia comprised within the 14th and 26th parallels of latitude.

5.—RATES OF WAGES

(1) Wage rates detailed in Clause 44.—Rates of Pay and Classification Definitions.

6.—JUNIOR EMPLOYEES

Liberty is reserved to the parties to apply to the Commission to include in this award, rates of wages and conditions of employment for junior workers.

7.—HOURS (OTHER THAN CONTINUOUS SHIFT EMPLOYEES

(1) Forty hours, exclusive of crib time, shall constitute a week's work for surface workers.

(2) Where shifts are worked on the surface, the forty hours shall then be inclusive of crib time for such shift workers.

(3) In the case of day surface workers, a day's work shall consist of eight hours per day, Monday to Friday inclusive, and shall be worked between the hours of 7 a.m. and 5 p.m. provided that by agreement between the worker, the employer, and Secretary of the appropriate Union or his nominee, the day's work may commence earlier than 7 a.m.

(4) Thirty seven and one half hours, inclusive of crib time, shall constitute a week's work for underground workers

(5) In the case of underground workers, each shift shall consist of seven and one half hours per day or shift, Monday to Friday inclusive, and the shifts shall be so arranged that an interval of thirty minutes will separate the finishing hour of one shift from the commencing hour of the next following shift.

(6) Six hours shall constitute a shift's work in all rises or in sinking specially wet shafts and winzes, and for men engaged inside gas or water spaces of any boiler or flue in cleaning or scraping work, and for men engaged in cleaning dust bins or dust flues. In case of boiler cleaners working broken shifts, one hour on the above description of work shall count as one hour and twenty minutes. In the case of Lancashire and Cornish boilers, all time necessary for a boiler cleaner to come out for a spell shall count as time worked in the boiler.

8.—OVERTIME (OTHER THAN CONTINUOUS SHIFT EMPLOYEES)

(1) All time worked outside or in excess of the ordinary working hours on any day, Monday to Friday inclusive, and prior to twelve noon on a Saturday, shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) All time worked after twelve noon on a Saturday and all time worked on a Sunday shall be paid for at the rate of double time.

(3) (a) When a worker is recalled to work overtime after leaving his employer's business premises (whether notified before or after leaving such premises) he shall be paid for at least four hours at overtime rates; provided that, except in the case of unforeseen circumstances arising, a worker shall not be required to work the full four hours if the job for which he was recalled is completed within a shorter period but if such

worker is subsequently recalled to work within the period of four hours for which payment has been made, an additional payment shall not be made nor shall any extra overtime be paid in respect of any period covered by such minimum payment.

(b) This subclause shall not apply in cases where it is customary for a worker to return to his employer's premises to perform a specific job outside his ordinary working hours or where the overtime is continuous (subject to any reasonable meal break which may be allowed) with the completion or commencement of ordinary working time.

(4) When computing overtime, the district allowances shall not be computed as an addition to the day's pay.

(5) These overtime rates shall not apply to excess time worked due to private arrangement between the workers themselves or owing to a relieving man failing to come on duty at the proper time. The time for which any worker may be paid at ordinary rates instead of overtime due to a relieving man failing to come on duty at the proper time, shall not exceed two hours, after the expiration of which overtime rates shall apply to the whole shift.

(6) When an employee, without being notified on the previous day, is required to continue working after the usual knock-off time for more than one hour, such employee shall be provided with a suitable meal by the employer or be paid $5.31 in lieu thereof.

(7) (a) When a worker is required for duty during any meal time whereby his meal time is postponed for more than half an hour, he shall be paid at overtime rates until he gets his meal.

(b) A worker shall not be compelled to work for more than five and one-half hours during ordinary or overtime hours or both without a break of the customary period for a meal.

(8) Subject to the provisions of the Mines Regulation Act 1946-1969 no workers covered by this award shall by collective action be a party to any ban on overtime.

(9) Overtime on shift work shall be based on the rate payable for the shift worked.

(10) In the calculation of overtime rates, each day shall stand alone. Provided that, when a worker continues working beyond midnight on any day, the hours worked after midnight shall be counted as part of the previous day's work for the purpose of calculating the rates to be paid.

9.—CONTINUOUS SHIFT EMPLOYEES

(1) The ordinary working hours shall not exceed forty in any one week to be worked in five shifts of eight hours each inclusive of a twenty minute crib time. Such crib time shall be allowed as near as possible to the middle of the shift.

(2) Except as hereinafter provided all work done beyond the hours of duty on any day shall be paid for at the rate of double time.

(3) A worker called upon to work a regularly rostered overtime shift not more often than once in every four weeks shall be paid for that shift at the rate of time and one-half for the first two hours and double time thereafter.

(4) These overtime rates shall not apply to excess time worked due to private arrangement between the workers themselves or owing to a relieving man failing to come on duty at the appointed time or where such time is worked to effect the periodical rotation of shifts. The time for which any worker may be paid at ordinary rates instead of overtime due to a relieving man failing to come on duty at the appointed time shall not exceed two hours after the expiration of which overtime rates shall apply to the whole of the shift.

(5) Overtime on shift work shall be based on the rate payable for the shift worked.

(6) (a) When a worker is recalled to work overtime after leaving his employer's business premises (whether notified before or after leaving such premises) he shall be paid for at least four hours at overtime rates; provided that, except in the case of unforeseen circumstances arising, a worker shall not be required to work the full four hours if the job for which he was recalled is completed within a shorter period but if such worker is subsequently recalled to work within the period of four hours for which payment has been made an additional payment shall not be made nor shall any extra overtime be paid in respect of any period covered by such minimum payment.

(b) This subclause shall not apply in cases where it is customary for a worker to return to his employer's premises to perform a specific job outside his ordinary working hours or where the overtime is continuous (subject to any reasonable meal break which may be allowed) with the completion or commencement of ordinary working time.

(7) When an employee, without being notified on the previous day, is required to continue working after the usual knock-off time for more than one hour, such employee shall be provided with a suitable meal by the employer or be paid $5.31 in lieu thereof.

(8) (a) All work performed during the ordinary working hours on Saturdays shall be paid at the rate of time and a half.

(b) All work done on Sundays during the ordinary hours of duty shall be paid for at the rate of double time.

(9) When computing overtime the district allowances shall not be computed as an addition to the day's pay.

(10) A continuous shift worker rostered off on a holiday shall be paid eight hours' pay at ordinary rates.

10.—REST PERIOD AFTER OVERTIME

(1) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that workers have at least ten consecutive hours off duty between the work of successive days.

(2) A worker (other than a casual worker) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(3) If, on the instructions of his employer, such a worker resumes or continues work without having had such ten consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(4) (a) Where a worker (other than a casual worker or a worker engaged on continuous shift work) is called to work on a Sunday or public holiday preceding an ordinary working day, he shall, wherever reasonably practicable, be given ten consecutive hours off duty before his usual starting time the next day. If this is not practicable then the provisions of subclauses (2) and (3) of this clause shall apply mutatis mutandis.

(b) Overtime worked in the circumstances specified in subclause (3) of clause 8 and subclause (6) of clause 9 shall not be regarded as overtime for the purposes of paragraph (a) of this subclause where the actual time worked is less than three hours on such call or on each of such calls.

(5) Provided that the provisions of this clause shall apply in the case of shift workers who rotate from one shift to another, as if 8 hours were 10 hours when overtime is worked—

(a) For the purpose of changing shift rosters;

(b) Where a shift worker does not report for duty; or-Continuous Shift Workers

(c) Where a shift is worked by arrangement between employees themselves.

11.—SHIFT WORK

(1) (a) A worker who does not work at least one week on day shift out of each consecutive three weeks shall be paid for each shift other than day shift at the rate of time and one quarter. Provided that if he is required to work for more than one week consecutively on afternoon shift or for more than one week consecutively on night shift, such a worker shall be paid at the rate of time and one quarter for each shift other than day shift in the consecutive second and subsequent weeks of afternoon or of night shift.

(b) This subclause shall not apply to workers employed on what is known as the Great Boulder Roster, or accepted variations thereof, nor to workers to whom this subclause would only otherwise apply because of a change of shift due to a private arrangement with another worker, nor to workers

(known as "rostered relief workers") regularly employed on continuous process work who are required to work shifts to enable other workers engaged on such work to change shifts weekly and to have their days off if such rostered relief worker is not required to work more night shifts or more afternoon shifts than the number of day shifts worked by him.

(2) A shift employee shall, in addition to the ordinary rate, be paid per shift of eight hours at the rate of $7.98 when on afternoon or night shift.

Liberty is reserved to either party to apply to amend this subclause in the event of any variation in shift loadings generally.

(3) (a) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, then workers employed on such afternoon or night shifts shall be paid at overtime rates.

(b) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work on that process is not carried out on a Saturday or Sunday or on any public holiday.

(4) (a) A worker who replaces a regular shift worker who is absent for any reason beyond the control of the employer, on afternoon or night shift, shall be paid at the rate of time and one-quarter if he does not work for five consecutive shifts (other than day shift) or, in the case of the Great Boulder Roster, six shifts and the appropriate shift work rate if he works five or more of such shifts consecutively or, in the case of the Great Boulder Roster, six or more shifts consecutively.

(b) A worker who replaces on afternoon or night shift a regular shift worker who is absent by reason of a direction of the employer shall be paid at overtime rates unless he works the number of consecutive shifts prescribed in the next preceding paragraph.

(c) The sequence of consecutive shifts shall not be deemed to be broken under subclause (4) hereof by reason of rostered days off in respect to workers employed on continuous process work or by a Saturday or Sunday in respect to other workers or by any public holiday or any other reason beyond the control of the employer.

(d) A worker who does not work five consecutive shifts for any reason beyond the control of the employer shall not be entitled to payment under the provisions of this subclause.

12.—ABSENCE THROUGH SICKNESS

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate, if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 14.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmittor shall stand to the credit of the worker at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause do not apply to casual workers.

13.—HOLIDAYS

(1) The following days or the days observed in lieu shall be allowed as holidays without deduction of pay namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. When any of the days mentioned in this subclause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or on a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday. Provided that any employee who does not present himself for work (if required) on the working day following any of the abovementioned holidays shall not be entitled to be paid for such holidays unless he produces proof satisfactory to the employer that he was prevented by sickness from presenting himself for work on any such day and that such sickness was not due to intemperance or misconduct.

(2) All work performed by continuous shift workers during ordinary working hours on any of the aforementioned holidays shall be paid for at the rate of double time.

(3) All work performed by other than continuous shift workers on any of the aforementioned holidays shall be paid for at the rate of double time and a half.

14.—ANNUAL LEAVE

(1) Annual leave shall be taken at the convenience of the management of the mine; workers to receive one month's notice of the date on which the leave is to commence; a committee of three to be appointed to each mine to assist the management in the arrangement of a suitable roster.

(2) (a) Except as hereinafter provided, a period of four consecutive weeks' leave with payment as prescribed in paragraph (b) hereof shall be allowed annually to a worker by his employer after a period of twelve months' continuous service with that employer.

(b) (i) A worker before going on leave shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period.

(ii) Subject to paragraph (c) hereof a worker shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable.

(aa) The rate applicable to him as prescribed by Schedule 1—Rates of Wages, subclause (4) of clause 25.—First Aid, and Schedule 2—District Allowances of this award; and

(bb) Subject to paragraph (c)(ii) hereof the rate prescribed for work in ordinary time by clause 9.—Continuous Shift Workers and clause 11.—Shift Work of the award according to the worker's roster or projected roster including Saturday and Sunday shifts;

(cc) The rate payable pursuant to clause 18.—Mixed Functions calculated on a daily basis, which the worker would have received for ordinary time during the relevant period whether on a shift roster or otherwise;

(dd) Any other rate to which the worker is entitled in accordance with his contract of employment for ordinary hours of work; provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed by clause 8.—Overtime, clause 30.—Special Rates and Provisions of this award, nor any payment which might have become payable to the worker as reimbursement for expenses incurred.

(c) In addition to the payment prescribed in paragraph (b) hereof, a worker shall receive a loading calculated on the rate of wage prescribed by that paragraph. The loading shall be as follows—

(i) Day Workers—a worker who would have worked on day work had he not been on leave—a loading of 17 1/2 per cent.

(ii) Shift Workers—a worker who would have worked on shift work had he not been on leave—a loading 17 1/2 per cent.

Provided that where the worker would have received shift loadings prescribed by clause 9.—Continuous Shift Workers, and clause 11.—Shift Work, and if applicable payment for work on a regularly rostered sixth shift in not more than one week in any four weeks had he not been on leave during the relevant period and such loadings would have entitled him to a greater amount than the loading of 17 1/2 per cent, then the shift loadings shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the 17 1/2 per cent loading.

Provided further, that if the shift loadings would have entitled him to a lesser amount than the loading of 17 1/2 per cent, then such loading of 17 1/2 per cent shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the shift loadings.

The loading prescribed by this paragraph shall not apply to proportionate leave on termination.

(d) The provisions of this subclause shall not operate in respect of leave fully due prior to the date of this order, irrespective of the date at which such leave is taken.

(3) After one month's continuous service in any qualifying twelve monthly period a worker whose employment terminates or who has worked less than 12 months shall be paid in the proportion that the number of shifts worked by him at the rate of wage prescribed by paragraph (b) of subclause (2) of this clause in that qualifying period bears to the full number of such shifts in that qualifying twelve monthly period.

(4) (a) Continuous shift workers, that is shift workers engaged in a continuous process who are rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the leave prescribed in subclause (2) hereof.

(b) Where a worker with twelve months' continuous service is engaged for part of a qualifying twelve monthly period as a continuous shift worker he shall be entitled to have the period of annual leave to which he is otherwise entitled increased by that proportion of the additional week as the number of shifts worked by him at ordinary rates bears to the full number of such shifts in the qualifying twelve monthly period.

(5) The amounts to be paid hereunder shall be calculated at the rate prevailing at the time the payment is made.

(6) (a) Where a worker is justifiably dismissed for misconduct during any qualifying twelve monthly period, the provisions of subclause (3) do not apply.

(b) A worker whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall receive payment in lieu of that leave at the rate of wage prescribed by paragraphs (b) and (c) of subclause (2) of this clause.

(7) If any of the holidays prescribed in clause 13.—Holidays of this award falls during a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day the worker shall have one extra day added to the period of annual leave.

(8) An employer may close down his operation or section or sections thereof for the purposes of allowing annual leave to all or the majority of his workers employed generally or in any such section or sections and in the event of a worker being employed for portion only of a year he shall only be entitled to such leave on full pay as is proportionate to his length of service during that period with such employer and if such leave is not equal to the leave given to the other workers he shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(9) This clause shall not apply to casual workers.

(10) In special circumstances and by mutual consent of the employer, the worker and the Union, annual leave may be taken in not more than two periods but neither of such periods shall be less than one week.

15.—CASUAL EMPLOYEES

Any worker dismissed through no fault of his own before the expiration of one week of his employment shall be considered casual and shall receive fifteen per cent above the rate specified for the work performed.

16.—FREE WATER

In all districts where free water is supplied by the employer single men shall get three gallons and married men six gallons per day.

17.—DRINKING WATER

(1) Good drinking water shall be supplied on all levels or where men are working and be kept cool and free from dust.

(2) Where practicable, boiling water shall be provided on all levels or where men are working.

18.—MIXED FUNCTIONS

(1) A worker engaged on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for the period he is so engaged but if he is so engaged for more than two hours on any day or shift he shall be paid the higher rate for the whole day or shift.

(2) Any worker regularly engaged in relieving work shall be paid the highest rate applicable to the class of work upon which he is employed during any day or shift.

19.—CHANGE ROOMS

If more than four persons are employed underground in any mine on one shift, sufficient heated accommodation shall be provided above ground near the principal entrance to the mine, and not in the engine room or boiler house, for enabling the persons employed in the mine to conveniently dry and change their clothes, and in no case shall men dry their clothes upon a boiler. Hot water shall be supplied in all change rooms. Change rooms shall be cleaned at least once daily and shall be kept warm in the winter and as far as practicable, cool in the summer.

20.—REDUCTION OF HANDS

Should occasion arise to reduce the number of workers employed the management, in selecting those to be retained, shall give full weight to the consideration of length of service and, all things being equal, shall retain those who have been longest in the employ of the Company.

Provided that in the case of a worker who was in the employ of Western Mining Corporation at Kambalda on 16 May

1986, the provisions of theTerms of Settlement which is contained in Part G (excluding the Schedule) of Exhibit C1 in Application No 976 of 1986 shall apply in lieu.

21.—ACCIDENT PAY

In the event of a worker meeting with an accident during the shift, or being required to attend to one who has met with an accident, he shall be deemed to have rendered duty during the whole of the shift, and be paid accordingly.

22.—CONTRACT OF SERVICE

(1) A contract of service to which this award applies may be terminated in accordance with the provisions of this clause and not otherwise, but this subclause does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed nor to affect an employer's right to dismiss a worker without notice for misconduct.

(2) Subject to the provisions of this clause, a party to a contract of service may, on any day give to the other party the appropriate period of notice of termination of the contract prescribed in subclause (5) of this clause and the contract terminates when that period expires.

(3) In lieu of giving the notice referred to in subclause (2) of this clause, an employer may pay the worker concerned his ordinary wages for the period of notice to which he would otherwise be entitled.

(4) (a) Where a worker leaves his employment—

(i) without giving the notice referred to in subclause (2) of this clause; or

(ii) having given such notice, before the notice expires, he forfeits his entitlement to any monies owing to him under this award except to the extent that those monies exceed his ordinary wages for the period of notice which should have been given.

(b) In a case to which paragraph (a) of this subclause applies—

(i) the contract of service shall, for the purposes of this award, be deemed to have terminated at the time at which the worker was last ready, willing and available for work during ordinary hours under the contract; and

(ii) the provisions of subclause (2) of this clause shall be deemed to have been complied with if the worker pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the worker's ordinary wages for the period of notice which should have been given.

(5) The period of notice referred to in subclause (2) of this clause is—

(a) in the case of a casual worker, one hour;

(b) in any other case, one week.

(6) The employer shall be under no obligation to pay for any day not worked upon which the worker is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of clause 12.—Absence Through Sickness or such absence is on account of holidays to which the worker is entitled under the provisions of this award.

(7) This clause does not affect the right of an employer to deduct payment for any day or portion of a day during which a worker cannot be usefully employed because of any strike or through any breakdown of machinery or due to any cause for which the employer cannot reasonably be held responsible.

(8) Where a worker who, through no fault of his own, has been given notice of termination of his employment, requests time off duty without pay for not more than one day for the purpose of seeking other employment that request shall be granted by his employer unless the employer has good and sufficient reason for refusing the request and advises the worker of those reasons at the time of refusal.

23.—PAYMENT OF WAGES

(1) Payment of wages shall be fortnightly. For mines situated at Kalgoorlie, Boulder and Fimiston, pay day shall be on Friday, the pay period to end on the Tuesday preceding such pay day. Pay day at other mines shall be on a day mutually agreed upon between the employer and the workers concerned, and the customary period shall be allowed between the closing of the pay period and the pay day. Any worker leaving or being discharged shall be paid the full amount of wages due to him within one hour of ceasing work, or within one hour of the opening of the mine office if such office was closed at the time of his ceasing work, or if the work done requires to be measured or assessed he shall be paid at the prescribed award rates within two hours of ceasing work. Provided that in the case of a machine miner who leaves during a pay period any settlement in excess of his wages rates shall, if requested by the miner concerned, be made within twenty-four hours and in the case of any other pieceworker who leaves during a pay period any settlement in excess of his wages rates, shall be made on the next succeeding pay day.

(2) If on any mine a section of workers is obliged to deviate one half mile or more from their journey to their home for the purpose of receiving their pay, a second pay place shall be established for the convenience of such workers.

(3) When or before payment of wages is made to a worker, he shall be issued with a docket showing at least the gross amount of wages and the details of any deductions that are made from his earnings. Upon request by the worker, he shall also be furnished within a reasonable time of such request, with details of the hours and rates of any overtime worked. Provided that in respect of annual leave payments, the worker, including the pieceworker, shall be issued with a voucher showing the calculations upon which such payment has been made.

24.—UNDERGROUND EMPLOYEES

All men who have to go underground to work shall work the same hours as miners.

25.—FIRST AID

(1) In any shaft where workers are employed, a first aid outfit shall be provided.

(2) Each shift boss or foreman shall have on his person a small emergency supply of bandages and padding, or similar requisites ready and available for use.

(3) (a) In shafts where over twenty men are usually employed underground a man qualified in first aid work shall be employed.

(b) In mines where over twenty men are usually employed underground, a man qualified in the use of suitable oxygen breathing apparatus supplied by the employer, shall be employed.

(4) Any first aid period appointed by the employer to perform first aid duties shall be paid an allowance of $1.03 per shift in addition to his ordinary rate of pay.

The provisions of this subclause apply to employees employed at Kambalda Nickel Operations from 25 May 1990.

The provisions of this subclause apply to employees employed at Windarra Nickel Project from 27 June 1990.

26.—RESUMPTION OF WORK AFTER ANNUAL LEAVE

When a worker is not notified prior to taking his annual leave that no further work is available on the mine, he shall be re-engaged on his return for a minimum period of two weeks or be paid two weeks wages in lieu thereof unless dismissed for misconduct.

27.—STRUCTURAL EFFICIENCY AND AWARD MODERNISATION

(1) Structural Efficiency—

(a) Employees shall perform a wide range of duties, including work which is incidental or peripheral to their main task or functions.

(b) In the event of there being a claim for re-classification by an existing employee to a higher level under any new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience, or on any other ground, the following principles apply—

(i) The parties agree that the existing award disputes avoidance procedure shall be followed.

(ii) Agreed competency standards shall be established by the parties in conjunction with T.A.F.E. and S.E.S.D.A. for all levels in any new classification structure before any claims for reclassification are processed.

(c) Current employees, whose existing wage rates are rationalised as a consequence of award restructuring, will remain paid at such rates and shall continue to receive wages increases appropriate to their current rates of pay on the following conditions—

(i) Are obliged to work within their current classification and may be required to use any lower classification skills which they hold or are trained in;

(ii) Will retain their grade when retraining in another area of the operation (i.e. multi-skilled employees will not be disadvantaged).

(2) Award Modernisation—

(a) The parties are committed to modernising the terms of the Award and to addressing issues associated with training.

(b) The parties will discuss all matters raised which may lead to increased flexibility and the removal of the obsolete conditions to better reflect the realities of modern industry practices and assist the restructuring process. Any such discussion with the Unions shall be on the premise that—

(i) The majority of employees at the enterprise must genuinely agree;

(ii) No employee will lose income as a result of the change;

(iii) The Unions must be parties to the agreement, particularly where enterprise level discussions are considering matters requiring variations to the Award;

(iv) Agreements will be ratified by the Commission;

(v) If agreement cannot be reached in the implementation process of a particular issue, the matter will be resolved in accordance with an agreed disputes procedure.

(c) Should an agreement be reached pursuant to subclause (b) hereof and that agreement requires variation of the award, the parties shall support such award variation.

(d) There shall not be limitations placed on any award matter raised for discussion, however any changes sought shall not affect award provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission.

(e) The parties agree that working parties will continue to meet with the aim of modernising the Award.

28.—AGED AND INFIRM EMPLOYEES

(1) Any worker who by reason of old age or infirmity, is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the Management Committee of the Mining Division of the Union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board, and pending the Board's decision, the worker shall be entitled to work for and be employed at the proposed lesser rate.

29.—BOARD OF REFERENCE

(1) The Commission hereby appoints for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to section 48 of the Industrial Arbitration Act, 1979.

(2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which under this award may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

30.—SPECIAL RATES AND PROVISIONS

(1) **Engineering Trades—**

(a) Height Money—

Tradespersons and welders engaged on the surface in the erection, repair and/or maintenance of steel frame buildings, smoke stacks, bridges or similar structures at a height of 15.5 metres or more above the nearest horizontal plane shall be paid at the rate of 89 cents per shift extra.

(b) (i) Goggles, glasses and gloves or other efficient substitutes therefore shall be available for the personal use of any employee engaged in welding.

(ii) Every employee shall sign an acknowledgement on receipt thereof and on leaving employment shall return same to the employer.

(iii) During the time the same are on issue to the employee, he/she shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(iv) No employee shall lend another employee the goggles, glasses or gloves or substitutes issued to such first mentioned employee, and if the same are lent, both the lender and the borrower shall be deemed guilty of wilful misconduct.

(v) Before goggles, glasses or gloves or any substitutes which have been used by an employee are re-issued by the employer to another employee, they shall be effectively sterilised.

(c) Dirt Money—

Employees employed on dirty work or in wet places, shall be paid 19 cents per hour extra.

(d) Employees in very wet places shall be provided with oilskin coats and rubber boots.

(e) Heat Money—

(i) Employees employed for more than one hour in the shade where the artificial temperature is between 46° and 55° Celsius shall be paid 19 cents per hour extra.

(ii) Employees employed for more than one hour where the artificial temperature exceeds 55° Celsius shall be paid 22 cents per hour extra. Where work continues for more than two hours in temperatures exceeding 55° Celsius employees shall be entitled to 20 minutes rest after every two hours, without deduction of pay.

(f) Confined Space—

Employees employed in confined spaces as hereinafter defined, shall be paid 24 cents per hour extra. "Confined space" means a working space the dimensions of which necessitate

an employee working continuously in a stooped or otherwise cramped position, or without proper ventilation or where confinement within a limited space is productive of unusual discomfort.

(g) Fumes—

Employees engaged on repair work to the roasters, under circumstances subjecting them to serious inconvenience from fumes, shall be entitled to payment of 23 cents per hour extra, with a minimum of 25 cents while so engaged.

(h) Explosive Powered Tools—

An employee required to use an explosive powered tool shall be paid 11 cents per hour extra.

(i) Special Rates Not Cumulative—

Where more than one of the disabilities entitling an employee to extra rates exists on the same job, the employer shall be bound to pay only one rate, namely—the highest for the disabilities so prevailing. Provided that this subclause shall not apply to Confined Space, Dirt Money, Height Money, or Heat Money, the rates for which are cumulative.

(j) An Electrician—Special Class—

Electrical Fitter and/or Armature Winder or an Electrical Installer who holds and in the course of employment may be required to use a current "A" grade or "B" grade licence issued pursuant to the relevant regulation in force on the 28th day of February 1978 under the Electricity Act, 1945 shall be paid an allowance of $12.20 per week.

(2) **Building Trades—**

(a) Wet and Dusty Places—

An employee employed in places where the atmosphere is excessively dust laden, or where water is continuously dripping so that the clothing or feet become wet, shall be paid 22 cents per hour in addition to the prescribed rate.

(b) Excessively Dirty Work—

An employee employed on excessively dirty work which is likely to render the employee or his/her clothes dirtier than on the normal run of work shall be paid 21 cents per hour in addition to the prescribed rate, but with a minimum payment as for four hours in any one day.

(c) Winder Drums and Head Frame Wheels—

An employee engaged in work on winder drums or head frame wheels shall be paid 22 cents per hour in addition to the prescribed rate, but with a minimum payment as for four hours in any one day.

(d) S.O.2. Towers—

An employee engaged on repair work to S.O.2 Towers shall be paid 22 cents per hour in addition to the prescribed rate, but with a minimum payment as for four hours in any one day.

(e) Boat Type and Swinging Scaffold—

An employee employed on a boat type or swinging scaffold shall be paid 22 cents per hour in addition to the prescribed rate. "Swinging Scaffold" means any scaffold suspended from the ground and which, by reason of the operations carried out on it or by reason of wind force or vibration, is likely to swing or sway. The employer shall permit an apprentice who has served less than two years of apprenticeship to work on a boat type or swinging scaffold and no such apprentice shall work on such a scaffold.

(f) Heat Money—

(i) An employee required to work for more than one hour continuously in the shade in places where the temperature is raised by artificial means to between 46.1° Celsius and 51.6° Celsius shall be paid 22 cents per hour in addition to the prescribed rate.

(ii) (aa) An employee required to work for more than one hour continuously in the shade in places where the temperature is raised by artificial means to exceed 51.6° Celsius shall be paid 27 cents per hour in addition to the prescribed rate.

(bb) Where work continues for more than two hours in that temperature employees shall be entitled to 20 minutes rest every two hours without deduction of pay.

(g) Boiler Flue or Roaster Work: Where bricklayers are employed for more than one hour inside the gas or water spaces of any boiler, flue or roaster, then six hours shall constitute a shift's work, provided that this subclause shall not apply in addition to the provisions of subclause (f) of this clause.

(h) Grinding Time: The employer shall provide sandstone grindstones. Employees shall be allowed to maintain their tools in proper working condition in working hours.

When an employee who has been employed for five consecutive working days is discharged, he/she shall be allowed two hours for grinding tools or be paid two hours' pay in lieu thereof.

(i) (i) Lead Paint Surfaces: No surface painted with Lead paint shall be rubbed down or scraped by a dry process.

(ii) Width of Brushes: All paint brushes shall not exceed 127mm in width and no kalsomine brush shall be more than 175mm in width.

(iii) Meals not to be taken in Paint Shop: No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.

(j) Spray Painting (Painters)—

(i) Lead paint shall not be applied by a spray to the interior of any building.

(ii) All employees (including apprentices) applying paint by spraying shall be provided with full overalls and head covering and respirators by the employer.

(iii) Where from the nature of the paint or substance used in spraying, a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used by an employee in spray painting, the employee shall be paid a special allowance of 59 cents per day.

(k) Water and Soap: Water and soap shall be provided in each shop or on each job by the employer for the use of painters.

(l) Electrical Sanding Machines: The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions—

(i) The weight of each such machine shall not exceed 5.9kgs.

(ii) Every employer operating any such machine shall ensure that each such machine together with all electrical leads and associated equipment is kept in a safe condition and shall, if requested so to do by any employee, but not more often than once in any four weeks, cause the same to be inspected by a licensed electrical employee under the Electricity Act and the Regulations made thereunder.

(iii) Employers shall provide and supply respirators of a suitable type to each employee and shall maintain same in an effective and cleanly state at all times. Where respirators are used by more than one employee, each such respirator shall be sterilised and a new pad inserted after use by each such employee.

(iv) Employers shall also provide and supply goggles of a suitable type: Provided that goggles with celluloid lenses shall not be regarded as suitable.

(v) All employees shall use such protective equipment when using electrical sanding machines of any type.

(m) (i) Carpenters and Joiners: A secure and weatherproof place shall be provided by the employer where carpenters' and joiners' tools may be locked up apart from the employer's plant and material.

(ii) Other employees: The employer shall, where practicable, provide a place on each job for the safekeeping of the employees' tools when not in use.

(n) Attendants on Ladders: No employee shall work on a ladder at a height of over 7.6 metres from the ground when such ladder is standing in any street, way or lane, where traffic is passing to and fro without an assistant on the ground.

(o) Plumbers on Sewerage Work—

Plumbers employed on work involving the opening up of house drains or waste pipes for the purpose of cleaning blockages or for any other purpose, or on work involving the cleaning of septic tanks or dry wells, shall be paid $1.07 per day in addition to the prescribed rate.

(p) All work made up by plumbers shall be welded by those employees.

(q) Change Room: The employer shall provide on each job a proper change room where the employee may change his/her clothes, and such place shall not be used for any other purpose.

(r) Boiling Water: The employer shall provide boiling water on each job for the use of his/her employees.

(s) (i) The employer shall supply a safety helmet for each of his/her employees requesting one on any job where, pursuant to the regulations made under the Construction Safety Act, 1972 an employee is required to wear such helmet.

(ii) Any helmet so supplied shall remain the property of the employer and during the time it is on issue, the employee shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(t) Toxic Substances—

(i) An employee required to use toxic substances or materials of a like nature shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.

(ii) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority or in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the union and the employer.

(iii) An employee using toxic substances or materials of a like nature shall be paid 27 cents per hour extra. Employees working in close proximity to others so engaged shall be paid 10 cents per hour extra.

(iv) For the purpose of this subclause all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.

31.—REPRESENTATIVE INTERVIEWING EMPLOYEES

A duly accredited official of the Union shall have the right to enter the employer's premises, but shall not without the permission of the employer, interview workers during their working hours.

32.—RECOGNISED CRIB PLACES

(1) Surface—

(a) When the number of workers employed on the surface exceeds ten the employer shall provide a fit and proper crib room.

(b) The room referred to in the preceding paragraph shall be furnished by the employer with seats and tables.

(c) The employer shall supply boiling water at meal times.

(d) The employer shall provide a reasonably vermin proof and ventilated cupboard in which the workers may store their crib.

(2) Underground—

(a) One or more places shall be set aside in each level on or from which men are working, in the driest and most comfortable positions available, at which the men shall eat their food.

(b) Such places shall be so situated that workers shall not be required to travel further than one thousand feet from their working places to such crib places.

(c) Such places shall be provided with tables, seats, and a reasonably vermin proof and ventilated cupboard in which the workers may store their cribs.

(d) The employer shall provide covered receptacles at all crib places to receive all meal scraps and other refuse and to arrange for the disposal of same. No person shall throw or leave waste food about the mine except in the receptacle provided.

(e) Adequate provision shall be made within fifty feet of each crib place to enable workers to wash at crib time.

33.—RECORD

(1) Each employer shall keep a time and wages book showing the name of each worker and the nature of his work, the hours worked each day and the wages and allowances paid each week. Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for the inspection of a duly accredited official of the Union during the usual office hours at the employer's office or other mutually convenient place, and such official shall be at liberty to take extracts therefrom. If for any reason the record be not available at the office or other mutually convenient place when the official desires to inspect it, it shall be made available for inspection within twelve hours either at the employer's office or other mutually convenient place.

34.—INSPECTIONS

Duly accredited officials of the union shall, after notifying the employer or his representative, have the right to enter the employer's property and premises to inspect all places during working hours where members of the union are employed, provided that they shall not impede or obstruct the workers in carrying out their work.

35.—RE-EMPLOYMENT AFTER ACCIDENT

Any worker who, as a result of his employment, suffers an accident and following treatment is certified by his doctor as fit to resume work, shall, if and when practicable, be re-employed.

36.—LONG SERVICE LEAVE

The long service leave provisions set out in Volume 59 of the "Western Australian Industrial Gazette" at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.

37.—DISTRICT ALLOWANCES

Payments shall be made in accordance with the provisions contained in Schedule 2 annexed hereto, so far as applicable.

38.—MAXIMUM RATE

The provisions of this award do not operate so as to require payment of more than double time rates, or double time and a half on a holiday prescribed under this award, for any work except and to the extent that the provisions of clause 30.—Special Rates and Provisions of this award apply.

39.—APPRENTICES

(1) Subject to the provisions of this clause, the Apprenticeship regulations, 1967 are incorporated in and form part of this award.

(2) The employment of apprentices in the bricklaying trade shall be governed by the provisions of the Building Trades Apprenticeship Regulations.

(3) Except as hereinafter provided every agreement of apprenticeship shall be for a period of five years unless, with the approval of the Commission, that period is reduced or deemed to have been commenced prior to the date of the agreement, provided that—

(a) where the apprentice has completed the tenth year of schooling and has obtained the High School Certificate or Junior Certificate of the Public Examinations Board in such subjects as the appropriate Apprenticeship Advisory Board or, as the case may be, the Building Trades Apprenticeship Board determines and has the vocational aptitude for the trade concerned, the period of apprenticeship shall be four years; and

(b) where the apprentice has completed the eleventh year of schooling and has obtained the High School Certificate or Junior Certificate of the Public Examinations Board in such subjects as the appropriate Apprenticeship Advisory Board or, as the case may be, the Building Trades Apprenticeship Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three and a half years; and

(c) where the apprentice has completed the twelfth year of schooling and has obtained the High School Certificate or Leaving Certificate of the Public Examinations Board in such subjects as the appropriate Apprenticeship Advisory Board or as the case may be, the Building Trades Apprenticeship Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three years.

(4) A minor who has satisfactorily completed an approved pre-apprenticeship course conducted by the Technical Education Division of the Education Department may be indentured as an apprentice under this award on a three-year term of apprenticeship.

(5) Where classes are provided by the Technical Education Division of the Education Department in the locality in which the apprentice is employed the hours of attendance at such classes shall be—

(a) where the period of apprenticeship is for five years—eight hours per week for the first school year and eight hours per fortnight for each of the three subsequent school years;

(b) where the period of apprenticeship is for less than five years—eight hours per week for the first and second school years and eight hours per fortnight for the next school year.

(6) The maximum number of apprentices allowed to any employer shall be in the proportion of one apprentice to every two journeymen in all trades except Bricklaying. Provided that the fraction of two shall not be less than one. In the Bricklaying trade it shall be as allowed under the Building Trades Apprenticeship Regulations.

(7) If the apprentice be employed on a mine and the mine ceases any operations in which the apprentice is engaged, the apprenticeship may be terminated in which case the apprentice shall be given a certificate to show the time he has served, and the employer shall endeavour to find him another employer willing to complete the term. Should the apprentice desire to complete his apprenticeship with another employer, the certificate he has received from the former employer shall be prima facie evidence of the wages he is entitled to receive and the period necessary to complete his apprenticeship.

(8) In the case of apprentices to the trades of carpentry and joinery, painting, plumbing and bricklaying, subject to Regulation 25 of the Apprenticeship Regulations 1967 apprentices from any district in country areas where an appropriate technical class is not established, shall attend an approved technical centre for two weeks' training each year without loss of pay.

(9) No apprentice to the painting trade shall be registered in accordance with the provisions of this award until such time as he has lodged with the Registrar, a certificate to the effect that he does not suffer any disability by reason of colour blindness.

(10) The training of plumbing apprentices shall include instruction in electric welding and oxy acetylene welding as far as practicable with the facilities available in the shop in which they are being trained.

(11) Apprentices shall be allowed to the following trades, namely—scientific instrument making and repairing, pattern-making, copper-smithing, electrical fitting, blacksmithing, fitting and/or turning, machining, motor mechanics, welding, carpentry and joinery, painting, plumbing, bricklaying.

40.—BEREAVEMENT LEAVE

When it is necessary for a worker to be absent from his employment for the purposes of attending a funeral or arranging therefore a worker (other than a casual worker) shall be entitled to a maximum of two days' leave at ordinary wages as prescribed on each occasion and on production of satisfactory evidence of the death within Australia of the worker's wife, husband, father, mother, brother, sister or child. Wife or husband as referred to in this clause shall include de facto wife or husband.

41.—JURY SERVICE

A worker required for jury service during his ordinary working hours shall be granted leave with pay for all periods of time he is so required for such service. A worker when applying for such leave shall be required to support his application with written proof of his attendance at such jury service.

42.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from twelve to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the worker make it inadvisable for the worker to continue at her present work, the worker 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 worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.

(b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be the right of the worker 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 worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks—

(a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

(a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of a worker on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wages to that of her former position.

(11) Replacement Workers

(a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.

(b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.

(c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.

(e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months qualifying period.

43.—TRAINING

(1) The parties to this award recognise that in order to increase the efficiency and productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to—

(a) developing a more highly skilled and flexible workforce;

(b) providing employees with career opportunities through appropriate training to acquire additional skills; and

(c) removing barriers to the utilisation of skills acquired.

(2) A training program is being drawn up and will be attached to this award. The training program recognises—

(a) the current and future skill needs of the company;

(b) the size, structure and nature of the operations of the company;

(c) the need to develop vocational skills relevant to the company and the engineering trades through courses conducted by accredited educational institutions and providers wherever possible.

(3) (a) Training may be either on or off the job and if the approved training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay.

(b) Any costs associated with enrolment and the purchase of prescribed textbooks, excluding those which are available in the employer's technical library, incurred in connection with the undertaking of approved training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall be on an annual basis subject to presentation of reports of satisfactory progress.

(c) Travel costs incurred by an employee undertaking approved training in accordance with this clause, which exceed those normally incurred in travelling to and from work, shall be reimbursed by the employer.

(4) To assist in the ongoing development of training, it is agreed that a training committee, comprised of equal numbers of employee and management representatives, be established. The committee shall have a charter clearly stating its role and responsibilities, based on the following—

(a) further development of the training programme and availability of training courses and career opportunities for employees;

(b) dissemination of information on the training programme and the availability of training courses and career opportunities for employees;

(c) recommendation of individual employees for training and reclassification consistent with the training programme and contingent upon such training being required by the employer;

(d) monitoring and advising management and employees in regard to the ongoing effectiveness of the training.

44.—RATES OF PAY AND CLASSIFICATION DEFINITIONS

(1) Classification and Wage Rates—Kambalda and Leinster Nickel Operations

(a) Engineering Employees—

(i) Engineering Employees Grade 1 (EEG1)

Not defined in Kambalda.

(ii) Engineering Employees Grade 2 (EEG2)

Semi-skilled employee comparable to former classifications of battery attendant, pipe fitter, etc.

(iii) Engineering Employees Grade 3 (EEG3)

Indentured tradespersons who satisfy all regulatory requirements or an EEG2 who has achieved a practical level of competency as approved by some regulatory control.

(iv) Engineering Employees Grade 4 (EEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.

e.g. Boilermaker with basic fitting skills including basic hydraulic and pneumatic fitting and vice versa.

(v) Engineering Employees Grade 5 (EEG5)

Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply multi-disciplinary skills as required including primary skills, and can competently work largely unsupervised.

e.g. A Fitter/Turner who acquires qualifications and training to competently act as a Diesel Fitter.

A Boilermaker who becomes competent at more detailed fitting such as balancing, aligning, fault detecting, etc.

(vi) Engineering Employees Grade 6 (EEG6)

Indentured tradespersons who possess the same qualities as an EEG5, and are also capable of supervising a large work group. Generally fulfils the duties as Assistant/Acting Supervisor and are therefore by appointment only.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	N/A		
EEG2	324.80	16.00	340.80
EEG3	372.40	16.00	388.40
EEG4	389.40	16.00	405.40
EEG5	404.10	16.00	420.10
EEG6	426.90	16.00	442.90

The above new rates include allowance for the withdrawal of the multi-skilled over award payment. The above new rates for EEG4, EEG5 and EEG6 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(b) Electrical Employees—

(i) Electrical Employee Grade 1 (EEG1)

Not defined in Kambalda.

(ii) Electrical Employee Grade 2 (EEG2)

Semi-skilled employee comparable to former classifications such as battery fitter, linesperson (three years experience) etc.

(iii) Electrical Employee Grade 3 (EEG3)

A linesperson with more than three years experience or an indentured electrical fitter or installer.

(iv) Electrical Employee Grade 4 (EEG4)

An EEG3 who continually demonstrates superior knowledge and ability and is capable of andling difficult problems without immediate supervision and has obtained training in, and can practically apply various skills appropriate to other trades, or an indentured instrument fitter.

(v) Electrical Employee Grade 5 (EEG5)

An indentured electrical or instrumentation fitter/installer who has completed relevant post-trade courses conducing to cross-skilling of these disciplines, or an EEG4 who has obtained through experience and practice a high degree of competency in multi-disciplinary trade areas, and is capable of supervising work groups.

(vi) Electrical Employee Grade 6 (EEG6)

An Electrical Employee Grade 5 who is capable of supervising a large work group. Generally fulfils the duties as Assistant/Acting Foreperson is therefore by appointment only.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	N/A		
EEG2	341.90	16.00	357.90
EEG3	372.40	16.00	388.40

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG4	389.40	16.00	405.40
EEG5	404.80	16.00	420.80
EEG6	426.90	16.00	442.90

The above new rates include allowance for the withdrawal of the multi-skilled over award payment. The above new rates for EEG4, EEG5 and EEG6 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(c) Building Employees—

(i) Building Employee Grade 1 (BEG1)

Not applicable at Kambalda Nickel Operations.

(ii) Building Employee Grade 2 (BEG2)

Not applicable at Kambalda Nickel Operations.

(iii) Building Employee Grade 3 (BEG3)

Indentured tradespersons who satisfy all regulatory requirements and who have achieved a practical level of competency as approved by some regulatory control.

(iv) Building Employee Grade 4 (BEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficullt problems without immediate supervisison, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.

(v) Building Employee Grade 5 (BEG5)

Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply multi-disciplinary skills as required including them primary skills, and can competently work largely unsupervised.

(vi) Building Employee Grade 6 (BEG6)

Indentured tradespersons who possess the same qualities as a BEG5, and are also capable of supervising a large work group. Generally fulfils the duties as assistant/acting supervisor and is therefore by appointment only.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
BEG1	N/A		
BEG2	N/A		
BEG3	363.20	16.00	379.20
BEG4	376.70	16.00	392.70
BEG5	389.60	16.00	405.60
BEG6	413.80	16.00	429.80

The above new rates for BEG4, BEG5 and BEG6 also include allowance for the withdrawal of the award leading hand rates, 1, 2 and 3 respectively.

(2) Classification and Wage Rates—Windarra Nickel Project

(a) Engineering Employees—

(i) Engineering Employees Grade 1 (EEG1)

Newly appointed semi-skilled employees who have not yet shown the necessary site knowledge to be competent enough to move from area to area within the operation without assistance. An employee will not remain in this classification for more than three months. This is a new classification.

(ii) Engineering Employees Grade 2 (EEG2)

Semi-skilled employees who have been employed at the operation for more than three months and are comparable to the former classification of pipe fitter.

(iii) Engineering Employees Grade 3 (EEG3)

Indentured tradespersons who satisfy all regulatory requirements of Grade 2 employees and have who achieved practical levels of competency as approved by the regulatory authority.

(iv) Engineering Employees Grade 4 (EEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision.

(v) Engineering Employees Grade 5 (EEG5)

Indentured tradespersons who continually demonstrate superior knowledge and ability, and have achieved successful completion in relevant post-trade studies or courses, which enables them to apply multi-disciplinary skills as required and can work largely unsupervised.

(vi) Engineering Employee Grade 6 (EEG6)

Indentured tradespersons who possess the same qualities as Grade 5 employees and are capable of organising and supervising a large work group. Generally fulfils the duties as Assistant/Acting Supervisor.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	302.00	16.00	318.00
EEG2	327.60	16.00	343.60
EEG3	363.20	16.00	379.20
EEG4	377.10	16.00	393.10
EEG5	384.20	16.00	400.20
EEG6	390.40	16.00	406.40

The above new rates include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(b) Electrical Employee—

(i) Electrical Employee Grade 1 (EEG1)

Newly appointed semi-skilled employees who have not yet shown the necessary site knowledge to be competent enough to move from area to area within the operation without assistance. An employee will not remain in this classification for more than three months. This is a new classification.

(ii) Electrical Employee Grade 2 (EEG2)

Semi-skilled employees who have been employed at the operation for more than three months and are comparable to the former classification of battery fitter.

(iii) Electrical Employee Grade 3 (EEG3)

A linesperson with more than three years experience or an indentured electrical fitter or installer.

(iv) Electrical Employee Grade 4 (EEG4)

A Grade 3 employee who continually demonstrates superior knowledge and ability and is capable of handling difficult problems without immediate supervision or an indentured instrument fitter.

(v) Electrical Employee Grade 5 (EEG5)

An indentured electrical or instrument fitter/installer who has completed relevant post-trade courses conducive to cross-skilling of these disciplines, or a Grade 4 employee who has obtained through experience and practice a high degree of competency in multi-disciplinary trade areas.

(vi) Electrical Employee Grade 6 (EEG6)

A Grade 5 employee who is capable of supervising a large work group and generally fulfils the duties as assistant/acting foreman.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	302.00	16.00	318.00
EEG2	327.60	16.00	343.60
EEG3	363.20	16.00	379.20
EEG4	391.70	16.00	407.70
EEG5	404.80	16.00	420.80
EEG6	411.00	16.00	427.00

The above new rates include allowance for the withdrawal of the award leading hand rates.

(c) Building Employees—

(i) Building Employee Grade 1 (BEG1)

Not applicable at Windarra Nickel Project.

(ii) Building Employee Grade 2 (BEG2)

Not applicable at Windarra Nickel Project.

(iii) Building Employee Grade 3 (BEG3)

Indentured tradespersons who satisfy all regulatory requirements and who have achieved a practical level of competency as approved by some regulatory control.

(iv) Building Employee Grade 4 (BEG4)

Indentured tradespersons who continually demonstrate superior knowledge and ability and are capable of handling difficult problems without immediate supervision, and have obtained training in, and can practically apply various skills as previously appropriate to other specific trade areas.

Award Wages	Rate	First & Second Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
BEG3	363.20	16.00	379.20
BEG4	376.70	16.00	392.70

The above new rate for BEG4 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

(3) The rates of pay in this Award include the first and second $8.00 per week Arbitrated Safety Net Adjustment payable under the December 1994 State Wage Decision. This first and second $8.00 per week Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase payable since 1st November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements insofar as that wage increase has not previously been used to offset an Arbitrated Safety Net Adjustment. Increases made under previous State Wage Case Principles, or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset Arbitrated Safety Net Adjustments.

(4) Apprentices—

Apprentices shall be paid the following percentage of tradespersons (EEG3) rate per week—

Four year term —	%
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a half year term—	
First Six Months	42
Next year	55
Following year	75
Final year	88
Third year term—	$
First year	55
Second year	75
Third year	88

Apprentices shall also receive the above percentage rates of the District Allowance, Disability Allowance, Tool Allowance and Industry Allowance available to Tradespersons under this award.

(5) Tool Allowance—

(a) Bricklayers, Carpenters and Joiners, Plumbers or Painters shall be paid the following tool allowance—

	$
Bricklayers	1.20
Carpenters and Joiners	2.20
Plumbers	1.70
Painters	0.50

This allowance includes an amount of five cents for the purpose of enabling employees to insure their tools against loss or damage by theft or fire and shall not be paid where the employer supplies employees with all necessary tools.

An employee in receipt of a tool allowance shall provide himself all necessary tools kept in suitable condition for the performance of the work.

An employee who fails to provide all such tools when required shall be guilty of a breach of this award and shall not be entitled to the tool allowance prescribed above until he/she complies with this provision.

(b) Metal Trades Employees—

Notwithstanding the previous provisions of this clause, a metal tradesperson, including an apprentice, to whom the employer does not supply all necessary tools, shall be paid an allowance of $8.40 per week.

A "tradesperson", for the purpose of this clause, shall be deemed to be an employee who is paid an equal rate of wage or higher than for the classification "Boilermaker".

(6) Leading Hands—

In addition to the appropriate wage prescribed in this clause, a Leading Hand shall be paid—

	$
(a) If placed in charge of not less than 3 and not more than 10 other employees	14.40
(b) If placed in charge of more than 10 and not more than 20 other employees	21.60
(c) If placed in charge of more than 20 other employees	28.10

(7) Disabilities Allowance—

An employee employed outside of his/her shop on construction work shall for the time so employed be paid a disabilities allowance at the rate of $1.00 per week in addition to the prescribed rate.

(8) Industry Allowance—

(a) Each employee shall be paid an allowance of $66.30 per week.

(b) The allowance recognises, and is in payment for, all aspects of work in the industry, including the location and nature of individual operations within it.

(c) The allowance shall be paid in addition to the rate of wage set out in this clause and shall be paid for all purposes of the award.

(9) Casual Employees—

A casual employee shall be paid 20% in addition to the ordinary rate prescribed herein.

(10) Minimum Wage

Notwithstanding the provisions of this award no employee (including an apprentice), 21 years of age or over, shall be paid less than $275.50 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 $275.50.

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 by this award for the classification in which the employee is employed.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

APPENDIX ONE—OLD DEFINITIONS AND CLASSIFICATION GROUPS

The following classifications and definitions have been replaced by those in Clause 44.—Rates of Pay and Classifications of this award. These "old" classifications and definitions shall remain as an Appendix to this award as a point of reference for new and existing employees and shall be deleted by agreement of the parties at an appropriate time.

Definitions—

Metal Trades—

"Electrical Fitter" means a tradesperson employed in making, repairing, altering, assembling, testing, winding or wiring electrical machines, instruments, meters or other apparatus, other than wires leading thereto, but an employee whose duty consists of placing electrodes in "neon" tubes sealed by the employee shall not be deemed for that reason to be an electrical fitter.

"Electrical Installer" means an employee engaged in the installation of electric lighting, electric meters, bells, telephones or motors and apparatus used in connection therewith and includes an employee engaged in running, repairing or testing of conductors used for lighting, heating or power purposes, but does not include an employee who is a linesperson or a meter fixer.

"Linesperson" means an employee engaged (with or without labourers assisting) in erecting poles for electrical wires, cables or other conductors, or erecting wires, cables or other conductors on poles or over buildings, or tying them to insulators, or joining or insulating them or doing any work on electrical poles off the ground.

"Motor Attendant" means an employee engaged on stopping or starting motors, replacing motor fuses, oiling or cleaning motors, and who shall be engaged exclusively on such work.

"Switchboard Attendant" means any employee attending to or in charge of any switchboard, or doing any work necessary for the working of the same other than repairs or additions.

"Motor Mechanic" means an employee employed in fitting, turning, making, repairing, altering, assembling, or testing the metal parts (including electric) of the engines or chassis of motor cars or any other motor vehicle.

"Pipe Fitter" means any employee employed on pipe work but does not include an employee solely engaged in assembling, joining and fixing pipes. All work on live steam pipes shall be a tradesperson's work.

"Drill Doctor" shall mean an employee, other than a tradesperson, engaged in assembling, renewing or putting together the parts of a rock drill as received from the maker and in servicing same when assembled, but does not include an employee engaged in any work in the nature of altering or repairing such parts which is the work of a fitter.

"First-Class Machinist" means a tradesperson who is engaged in setting up or in setting up and operating the following machines: lathe, boring machine, milling machine, planing machine, shaping machine, slotting machine, and grinding machine.

"Second-Class Machinist" means an employee who is engaged in operating, or setting up and operating a key setting machine or any machine enumerated in the definition of "first-class machinist", and includes an employee engaged as a pipe fitter on low pressure work but does not include an employee who is engaged as a tradesperson.

"Third-Class Machinist" means an employee who operates any machine set up by a tradesperson or any machine the setting up of which does not require the knowledge or skill of a second-class machinist, but does not include a process employee.

"First-Class Welder" means an employee using electric arc or petrol or coal gas blow pipe on any work other than that of a second-class welder as defined.

"Second-Class Welder" means an employee who—

(1) Uses any of the foregoing types of welding apparatus in filling castings; or

(2) Welds with the aid of jigs; or

(3) Operates automatic welding machines for the setting up of which the employee is not responsible; or

(4) Operates a profile cutting or a straight line cutting machine.

"Tradesperson" means an employee who in the course of employment works from drawings or prints, or makes precision measurements or applies general trade experience, but does not include an apprentice.

"Instrument Maker and/or Repairer" means an employee who is required to design, test, repair and build measuring and/or recording appliances (including electrical appliances) and/or instruments and carry out experiments on same in workshops/laboratory.

"Electrician—Special Class" means, subject to subclause (3) hereunder, an electrical fitter or electrical installer who—

(1) (a) Has satisfactorily completed a prescribed post trade course in industrial electronics; or

(b) Has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under paragraph (a) hereof; and

(2) (a) Is engaged on work on or in connection with complicated or intricate circuitry, which work requires for its performance the standard of knowledge referred to in subclause (1) hereof; and

(b) Is able, where necessary and practicable, to perform such work without supervision and to examine, diagnose and modify systems comprising inter-connected circuits,

but does not include such an employee unless the work on which he/she is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College trade course.

(3) For the purpose of this award an employee shall be deemed to be an Electrician—Special Class only for time during which he/she meets the foregoing conditions, unless—

(a) That time exceeds sixteen hours per week; or

(b) In the opinion of the employer or, in the event of disagreement, in the opinion of a Board of Reference, that time is likely during the course of employment to exceed sixteen hours per week on average

in which case the employee shall be classified as Electrician—Special Class for as long as the employment continues on either of those bases.

(4) In the event of disagreement about the implementation of this Electrician—Special Class provision, a Board of Reference shall determine the matter.

(5) For the purpose of this definition the following courses are deemed to be prescribed post trade courses in industrial electronics—

(a) The Post Trade Industrial Electronics Course of the N.S.W. Department of Technical Education.

(b) The Industrial Electronics Course (Grades 1 and 2) as approved by the Education Department of Victoria.

(c) The Industrial Electronics Course of the South Australian School of Electrical Technology.

(d) The Industrial Electronics (Course "C") of the Department of Education, Queensland.

(e) The Industrial Electronics Course of the Technical Education Department of Tasmania.

(f) The Certificate in Industrial Electronics of the Technical Education Division, Education Department of Western Australia.

Building Trades—

"Bricklayer" means an employee engaged in bricklaying, brickcutting, firework (including kiln work), furnaces or furnace work of any description, setting cement bricks, cement blocks and cement pressed work, setting coke slabs or coke bricks or plaster partition blocks, or any other work which comes or which may be adjudged to come within the scope of brick work generally.

"Carpenter and Joiner" means an employee other than an assembler of flush panel doors engaged upon work ordinarily performed by a carpenter and joiner in any workshop establishment, yard or depot, or on site (including dams, bridges, jetties, and/or wharves). Without limiting the generality of the foregoing such work may include—

(1) The erection and/or fixing work in metal;

(2) (a) The marking out, lining, plumbing and levelling of prefabricated form work and supports thereto;

(b) The erection and dismantling of such form work, but without preventing builders' labourers from being employed on such work;

(c) The fixing of asbestos products, dry fixing of fibre plaster materials and the fixing of building panels, wall board and plastic material;

(d) The erection of curtain walling;

(e) The setting out and laying of wood blocks or parquetry or wooden mosaic flooring; and

(f) The erection of prefabricated buildings or section of buildings constructed in wood prepared in factories, yards or on site.

"Painter" means—

(1) An employee who applies paint or any other preparation used for preservative of decorative purposes—

(a) To any building or structure of any kind or to any fabricated unit forming or intended to form part of any building or structure; or

(b) To any machinery or plant;

(2) And includes any employee engaged in the hanging of wallpapers or substitutes therefore or in glazing,graining, gilding, decorating, applying plastic relief, putty glazing or marbling;

(3) And also includes any employee who strips off old wallpapers or who removes old paint or varnish or who is engaged in the preparation of any work for painting or of any materials required for the trade;

(4) And also includes any employee engaged in signwriting;

(5) But does not include an employee doing rough painting (or rough preparation therefore) of any building or structure other than a cottage, office, changeroom, workshop or storeroom when it is intended that such a building or structure shall be only roughly painted with not more than one coat of paint; or doing rough painting of any plant; or doing rough painting (with not more than one coat) of any machinery or other iron work.

"Plumber" means an employee employed or usually employed in executing or plumbing, gas fitting, pipe fitting, or domestic engineering work, or who executes any work in or in connection with—

(1) Sheet lead, galvanised iron or other classes of sheet metal generally used by plumbers;

(2) The fixing of lead, wrought, cast or sheet iron, copper, brass or other classes of pipe work, including earthenware pipes, ventilating or air conditioning appliances;

(3) Water (hot or cold), steam (other than for power purposes), gas, air oil (for heating or cooking purposes), vacuum systems and sewerage installations;

(4) House, ship, sanitary, chemical and/or general plumbing;

(5) Fire service work;

(6) Fitting and fixing asbestos corrugated sheets, guttering, down pipes, ridging, rain heads, ventilators, sky-lights, fascia and barge boards;

(7) Irrigation installations.

Classification Groups—

People previously engaged in these classifications are as follows—

Engineering employees Grade 1
Machinist—Third Class

Engineering employees Grade 2
Switchboard Attendant
Pipe Fitter
Machinist—2nd Class
Drill Doctor
Welder 2nd Class

Engineering employees Grade 3
Angle Iron Smith
Blacksmith
Boilermaker
Boilermaker—Welder
Coppersmith
Motor Mechanic
Sheet Metal Employee
Welder—First Class
Fitter and/or Turner

Machinist—First Class

Electrical Employee Grade 2
Motor & Battery Attendant
Motor Attendant
Linesman Grade 2

Electrical Employee Grade 3
Linesman Grade 1
Fitter Refrigeration
Electrical Fitter
Electrical Installer

Electrical Employee Grade 4
Electrician—Special Class
Instrument Maker and/or Repairer

FIRST SCHEDULE—DISTRICT ALLOWANCES

Payment shall be paid in accordance with the provision of this schedule so far as applicable.

(1) In addition to the wages prescribed in Clause 5.—Rates of Wages of this award, the following allowances shall be paid for five days per week to workers employed in the districts which are hereinafter respectively described, with the exception of districts contained therein which are situated within a radius of ten miles of Kalgoorlie, Coolgardie and Southern Cross, viz—

(a) First District—

Lying south of Kalgoorlie and comprised within lines starting from Kalgoorlie, then W.S.W. to Woolgangie, thence S.E. to Dundas, thence N.E. to a point ten miles east of Karonie on the Trans-Australia line, and thence back to Kalgoorlie; at the rate of 52 cents per week extra for those mines within ten miles of the railway and 80 cents per week for those outside.

(b) Second District—

Starting from Kalgoorlie W.S.W. to Woolgangie, thence N.N.W. to the intersection of the 120E. meridian with the 30S parallel of latitude, thence N.E. by E. to Kookynie, thence back to the point ten miles east of Kookynie on the Trans-Australia line, and thence back to Kalgoorlie; at the rate of 70 cents per week extra for those mines within ten miles of the railways and 90 cents per weekfor those outside.

(c) Third District—

Starting from and including Kookynie, then N. by W. to Kurrajong, thence N.E. to Stone's Soak, thence S.E. to and including Burtville, thence S.W. through Pindinnie to Kookynie; at the rate of 70 cents per week extra for those mines within ten miles of the railways and 90 cents per week for those outside.

(d) Fourth District—

Surrounding Southern Cross within a radius of thirty miles; for those mines outside a radius of ten miles from Southern Cross, including Westonia and Bullfinch, at the rate of 25 cents per week.

(e) Fifth District—

Comprising all mines not specifically defined in the foregoing boundaries but within the area comprised within the 24th and 26th parallels of latitude; at the rate of $1.20 per week.

(2) Notwithstanding anything herein contained, the following allowances shall be paid in the districts or mines mentioned hereunder—

Per Week	$
Ora Banda and Waverley Districts	0.70
Yalgoo District.	0.70
Meekatharra, Mt. Magnet and Cue Districts	0.85
Wiluna District	1.00
Youanmi District	1.00
Cox's Find Goldmine	0.90
Corduroy Goldmine and mines within ten miles' radius therefrom	1.20
Lallah Rooke Goldmine, Halley's Comet Goldmine, Prophecy Goldmine and mines within ten miles' radius therefrom	1.50
Mayfield District	0.70
Evanston District	1.00

With regard to the Meekatharra, Mt. Magnet, Cue, Yalgoo and Wiluna Districts, an additional allowance at the rate of 15 cents per week shall be paid to workers employed at mines situated five miles from a Government railway.

With regard to the Big Bell Goldmine, the Triton Goldmine and Cox's Find Goldmine, the sum of 15 cents per week may be deducted from the district allowance which would otherwise be paid.

(3) In the case of any mine or district within the area to which this award applies which is not dealt with under the provisions of this schedule, the Union may apply to the Western Australian Industrial Commission at any time for the purpose of having an allowance prescribed, upon serving upon the employer concerned fourteen days' notice thereof prior to the date of such application the service of such notice shall be made pursuant to the provisions relating thereto prescribed by the regulations under the Industrial Arbitration Act, 1979.

SECOND SCHEDULE—PARTIES TO THE AWARD

Unions Party to the Award

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

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

Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

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

Plumbers and Gasfitters Employees Union of Australia, West Australian Branch, Industrial Unioin of Workers.

Employer Party to the Award

Western Mining Corporation Limited

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award/industrial agreement/order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement/order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

(a) is not a member of the organisation; and

(b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

(a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;

(b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and

(c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

PARLIAMENTARY EMPLOYEES AWARD 1989
A 15 of 1987, A 4 of 1988 and A 7 of 1989.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 7th day of May, 1997

(Sgd.) J. CARRIGG,
Registrar.

Parliamentary Employees Award 1989
No. A 15 of 1987, A 4 of 1988 and A 7 of 1989.

1.—TITLE

This Award shall be known as the Parliamentary Employees Award 1989.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
1A Statement of Principles—August 1996
2. Arrangement
3. Scope
4. Term
5. Definitions
6. Hours of Duty
7. Overtime
8. Meal Breaks
9. Meal Allowance
10. Shift Work Allowance
11. Public Holidays
12. Annual Leave
13. Long Service Leave
14. Compassionate Leave
15. Leave of Absence
16. Trade Union Training Leave
17. Leave to Attend Union Business
18. Special Provisions
19. Allowances
20. Records and Information
21. Deduction of Subscription
22. Right of Entry
23. Payment of Salaries and Wages
24. Parliamentary Officers—Salaries
24A. Arbitrated Safety Net Adjustment
25. Parliamentary Support Services Employee Wages
26. First Aid
27. Breakages
28. Uniforms and Clothing
29. Preservation and Non-Reduction
30. Sick Leave
31. Maternity Leave
32. No Extra Claims
33. Part-Time Employment
34. Casual Employment
35. Apprentices
36. Higher Duties Allowance—Parliamentary Support Service Employees
37. Establishment of Consultative Mechanisms
38. Award Modernisation
39. Introduction of Change
40. Redundancy
41. Named Parties

3.—SCOPE

This Award shall apply to all employees eligible for membership of the Association and the Union employed in the Parliament of the State of Western Australia, except those employees whose salaries or salary ranges are determined or recommended pursuant to the Salaries and Allowances Act, 1975 and who do not occupy offices for which the remuneration is determined by an Act of Parliament to be fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act of Parliament.

4.—TERM

The term of this Award shall be for a period of one year from the date hereof.

5.—DEFINITIONS

In this Award, unless the contrary intention appears—

"Employer" means—

(a) The Governor in Council acting on the recommendation of the President or the Speaker, as the case may be, in relation to the Clerks and Deputy Clerks of the Legislative Council and the Legislative Assembly;

(b) The President of the Legislative Council acting on the recommendation of the Clerk in relation to employees of the Council;

(c) The Speaker of the Legislative Assembly acting on the recommendation of the Clerk in relation to employees of the Assembly;

(d) The President and Speaker in relation to—

(i) the Chief Hansard Reporter;

(ii) the Parliamentary Librarian;

(iii) the Executive Officer (Joint House),

(e) The President and Speaker acting on the recommendation of the appropriate head of department in relation to employees of departments other than the Legislative Council or Legislative Assembly.

"House" means either the Legislative Council or the Legislative Assembly of the Parliament of Western Australia.

"Employee" means Parliamentary Officer and/or Parliamentary Support Service Employee.

"Parliamentary Support Services Employee" (PSSE) means all those employees employed in the occupational areas of gardening, catering, stewarding and bar attending.

"Officer" means all employees other than Parliamentary Support Service Employees.

"Association" means the Civil Service Association (Inc.) of Western Australia.

"Sessional Work" means work performed by an employee where that employee is required throughout a session to remain on duty for the duration of each day's sitting of a House or until rostered off.

"Union" means The Federated Miscellaneous Workers' Union of Australia, Hospital, Service & Miscellaneous W.A. Branch and the Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers.

"Casual Officer" means an officer engaged by the hour or any officer employed as a casual on an hourly rate of pay by agreement between the Association and the Employer.

"Part-Time employment" means regular and continuing employment for a minimum of fifteen hours per week and a maximum of thirty hours per week.

6.—HOURS OF DUTY

PART A—PARLIAMENTARY OFFICERS

(1) Subject to subclause (3) of this part, the ordinary hours of attendance of Parliamentary Officers not required to perform sessional work shall be in accordance with the provisions of Administrative Instruction 701 of the Public Service Commission of Western Australia.

(2) (a) For Parliamentary Officers required to perform sessional work, (when the House is not sitting) the ordinary hours of attendance shall not exceed 65 hours per fortnight or six and a half hours per day. Such hours shall be worked on Monday to Friday between the hours of 8.00 a.m. and 6.00 p.m.

(b) For Parliamentary Officers required to perform sessional work, (when the House is sitting), in addition to the ordinary hours mentioned in subclause (2)(a) above, shall be required to work between 4.30 p.m. and 7.30 p.m. in accordance with subclause (2) of Clause 7.—Overtime of this Award. Time worked past 7.30 p.m. shall be paid as overtime as defined in Clause 7 of this Award.

(3) Ordinary hours may be worked outside the hours specified in subclause (1) of this part hereof where it is permitted, pursuant to an agreement between the employer, the Association and the Union.

PART B—PARLIAMENTARY SUPPORT SERVICES EMPLOYEES

(1) The ordinary hours of attendance of Parliamentary Support Service Employees not required to work sessional work shall not exceed 76 hours per fortnight nor 7 hours 40 minutes per day. Such hours shall be worked on Monday to Friday between the hours of 7.00 a.m. and 6.00 p.m.

(2) Parliamentary Support Service Employees required to perform sessional work shall be rostered pursuant to an agreement between the employer, the Association and the Union for no less than six hours and no more than ten hours per day. Any hours worked in excess of those rostered hours shall be paid overtime as defined in Clause 7 of this Award.

7.—OVERTIME

(1) Overtime means all time worked in excess of the ordinary hours, and/or rostered hours.

(2) For Parliamentary Officers required to work under Part A(2) of Clause 6 of this Award no overtime shall be paid between 4.30pm and 7.30pm while the House is sitting.

(3) Where an employee is required to be on duty during the evening meal break, payment shall be made at the rate of time and a half.

(4) All time worked on Saturday or Sunday will be paid at the appropriate rate for a minimum of three hours.

(5) Payment for overtime for Parliamentary Officers shall be calculated on an hourly basis in accordance with the following formula—

Weekdays

For the first three hours on any one week day—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours on any one week day—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

Saturdays

First three hours on any Saturday—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours or after 12.00 noon, whichever is the earlier, on any Saturday—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

Sundays

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

Public Service Holidays

During prescribed hours of duty—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

in addition to the normal day's pay.

During hours outside of prescribed hours of duty—

$$\frac{\text{Fortnightly Salary}}{75} \times \frac{5}{2}$$

(6) Payment for overtime for PSSE's shall be calculated on an hourly basis in accordance with the following formula.

Weekdays

For the first two hours on any one week day—

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{3}{2}$$

After the first two hours on any one week day—

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{2}{1}$$

Saturdays

First two hours on any Saturday—

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{3}{2}$$

After the first two hours or after 12.00 noon, whichever is the earlier, on any Saturday—

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{2}{1}$$

Sundays

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{2}{1}$$

Public Service Holidays

$$\frac{\text{Fortnightly Wages}}{76} \times \frac{5}{2}$$

(7) All other provisions relating to overtime shall be as per the Public Service General Conditions of Service and Allowances Award No. PSA A 4 of 1989, as referred to in clause 19.—Allowances of this award.

8.—MEAL BREAKS

(1) An employee shall not work for more than five hours without a break for a meal. Such meal break shall not be less than 30 minutes nor more than one hour, to be taken as mutually arranged between the employer and the employee.

(2) The customary 15 minutes morning, afternoon and after 9.00 p.m. tea breaks shall continue to be observed.

(3) Employees performing sessional work shall have a meal break of 60 minutes to be taken between 5.30 p.m. and 7.30 p.m., with the exception of catering staff which shall be by mutual agreement between the Association, the Union and employer.

9.—MEAL ALLOWANCE

(1) An employee who is required to work overtime under Clause 7 of this Award and where such overtime extends beyond 5.00 p.m., a meal allowance shall be paid in accordance with the provisions of the Public Service Overtime Award No. 10 of 1978 Clause 8 as amended. Provided that where such overtime extends beyond 6.00 a.m. the following day, an allowance of $9.25 or the amount charged by the House, whichever is the higher, for such a three course meal shall be paid.

(2) Provided however that where a meal of a reasonable standard is provided by the House at no cost to the employee the allowance provided for in subclause (1) of this clause shall not apply.

(3) All other provisions relating to this allowance shall be as per the Public Service Overtime Award as referred to in Clause 19.—Allowances.

10.—SHIFT WORK ALLOWANCE

All provisions relating to this allowance shall be as per the Public Service General Conditions of Services and Allowances Award No. PSA A 4 of 1989 as referred to in Clause 19.—Allowances.

11.—PUBLIC HOLIDAYS

(1) The following days shall be allowed as holidays with pay—

(a) New Year's Day, Good Friday, Easter Monday, Christmas Day, the 26th day of December, the 25th day of April (Anzac Day).

(b) The Anniversary of the Birthday of the Sovereign, Foundation Day (1st day of June), Labour Day (6th day of March).

(c) All days which the Governor may appoint and are notified as Public Service Holidays.

(2) Whenever any of the days mentioned in subclause (b) fall on a day other than a Monday, the next following Monday shall be the holiday instead of such day.

(3) When any of the days observed as a holiday in this clause fall during a period of annual leave the holiday or holidays shall be observed on the next succeeding day or days as the case may be after completion of that annual leave.

(4) This clause shall not apply to casual employees.

12.—ANNUAL LEAVE

(1) Officers performing sessional work shall be allowed five weeks leave in each 12 months service. Of this leave, four weeks shall be counted as ordinary recreational leave and the remaining week as special leave.

(2) All other provisions relating to annual leave for Parliamentary Officers, shall be as per Clause 15.—Leave of Absence.

(3) Parliamentary Support Service Employees shall be granted annual leave as follows—

(a) Except as hereinafter provided a period of four consecutive weeks' leave shall be allowed to a PSSE, by his employer after each period of 12 months' continuous service with such employer.

(b) A PSSE shall be paid for any period of annual leave prescribed by this clause at the ordinary rate of wage the PSSE has received for the greatest proportion of the calendar month prior to taking the leave and in the case of rostered PSSE's, that rate of wage shall include the weekend penalties the PSSE would have received had the PSSE not proceeded on annual leave.

Where it is not possible to calculate the weekend penalties the PSSE would have received, the PSSE shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.

(c) A PSSE may, with the approval of the employer, be allowed to take the annual leave prescribed by this clause before the completion of 12 months' continuous service as prescribed by subclause (3)(a) of this clause.

Provided that when a PSSE has proceeded on leave prior to the completion of the 12 months' continuous service the loading prescribed in subclause (3)(i) of this clause shall be paid on a pro rata basis.

(d) Subject to as hereinafter provided—

(i) If after one month's continuous service in any qualifying 12 monthly period a PSSE lawfully terminates his service, or his employment is terminated by the employer through no fault of the PSSE, the PSSE shall be paid 2.92 hours or in the case of PSSE's provided for in subclause (3)(g) of this clause, 3.65 hours in respect of each completed week of continuous service in that qualifying period.

(ii) If the services of an PSSE terminates and the PSSE has taken a period of leave in accordance with subclause (3)(c) of this clause, and if the period of leave so taken exceeds that which would become due pursuant to subclause (3)(d) paragraph (i) of this clause, the PSSE shall be liable to repay an amount representing the difference between the amount received by the PSSE for the period of leave taken in accordance with subclause (3)(c) of this clause and the amount which would have accrued in accordance with subclause (3)(d) paragraph (i) of this clause. The employer may deduct this amount from monies due to the PSSE by reason of the other provisions of this Award at the time of termination.

(iii) In addition to any payment to which PSSE's may be entitled under subclause (3)(d) of this clause, a PSSE whose employment terminates after completion of a 12 month qualifying period and who has not been allowed the leave prescribed under this Award in respect of that qualifying period, shall be given payment as prescribed in subclause (3)(b) and (3)(i) of this clause, in lieu of that leave unless they have been justifiably dismissed for misconduct and the misconduct for which they have been dismissed occurred prior to the completion of that qualifying period.

(e) When work is closed down for the purpose of allowing annual leave to be taken, PSSE's with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them.

Provided that nothing herein contained shall deprive the employer of his right to retain such PSSE's during the close down period as may be required.

(f) The annual leave prescribed in subclause (3)(a) of this clause may, with the consent of the PSSE and the employer, be taken in any portion, provided that one portion shall be at least one week.

(g) Shift PSSE's shall be allowed one week's leave in addition to that prescribed in subclause (3)(a) of this clause with respect to each period of 12 months continuous service.

(h) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period a PSSE is on annual leave, long service leave, observing a public holiday prescribed by this Award, absent through sickness with or without pay except for that portion of an absence that exceeds six months in any year.

(i) Annual Leave Loading—

(i) A PSSE shall be paid a loading of 17.5 percent calculated on the rate as prescribed in subclause (3)(b) of this clause.

(ii) The loading prescribed in this subclause shall not apply to proportionate leave on termination.

(iii) The loading prescribed in this subclause shall be payable on retirement, provided the PSSE is over 55 years of age.

(j) The provisions of this clause shall not apply to casual employees.

13.—LONG SERVICE LEAVE

Parliamentary Support Service Employees shall be entitled to long service leave pursuant to the Long Service Leave Government Wages Employees General Order.

14.—COMPASSIONATE LEAVE

(1) A PSSE shall, on the death within Australia of a spouse, de-facto spouse, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild, be entitled, on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the PSSE in two ordinary working days. Proof of such death shall be furnished by the PSSE to the satisfaction of the employer.

(2) Provided that payment in respect of compassionate leave is to be made only where the PSSE otherwise would have been on duty and shall not be granted in any case where the PSSE concerned would have been off duty in accordance with his/her roster or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

15.—LEAVE OF ABSENCE

(1) Subject to the provisions of this Award full-time Parliamentary Officers shall be entitled mutatis mutandis to the same conditions relating to—

(a) annual recreational leave;
(b) long service leave;
(c) sick leave;
(d) leave without pay;
(d) study leave;
(e) study leave;
(f) military leave;
(g) maternity leave;
(h) witness and jury service;
(i) short leave;

as permanent officers employed under the provisions of the Public Service Act, 1978 provided that Parliamentary Support Service Employees shall also be entitled to (d), (e), (f) and (h) above.

(2) A part-time Parliamentary Officer shall receive payment for annual leave, sick leave and long service leave on a pro rata basis as permanent officers employed under the provisions of the Public Service Act, 1978.

16.—TRADE UNION TRAINING LEAVE

(1) Subject to the provisions of this clause—

(a) The employer shall grant paid leave of absence to employees who are nominated by the Association or the Union to attend short courses conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.

(2) An employee shall be granted up to a maximum of five (5) days paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five (5) days and up to ten (10) days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten (10) days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a public holiday, public service holiday or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(c) Subject to paragraph (a) of this subclause, shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(4) The granting of leave pursuant to the provisions of subclause (1) of this clause is subject to the operation of the organisation not being duly affected and to the convenience of the employer.

(5) (a) Any application by an employee shall be submitted to the employer for approval at least four (4) weeks before the commencement of the course provided that the employer may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the Association or the Union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

(6) A qualifying period of twelve (12) months equivalent shall be served before an employee is eligible to attend courses or seminars of more than a half day duration. The employer may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than twelve (12) months service.

(7) (a) The employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

17.—LEAVE TO ATTEND UNION BUSINESS

(1) The employer shall grant paid leave at the ordinary rate of pay during normal working hours to an employee—

(a) who is required to give evidence before any Industrial Tribunal;

(b) who as an Association or Union nominated representative is required to attend negotiations and/or conferences between the Association, the Union and employer;

(c) when prior agreement between the Association, the Union and employer has been reached for the employee to attend official Association or Union meetings preliminary to negotiations or industrial hearings; and

(d) who as an Association or Union nominated representative is required to attend joint Association/Union/management consultative committees or working parties.

(2) The granting of leave is subject to departmental convenience and shall only be approved;

(a) where reasonable notice is given for the application for leave;

(b) for the minimum period necessary to enable the Association or Union business to be conducted or evidence to be given; and

(c) for those employees whose attendance is essential.

(3) The employer shall not be liable for any expenses associated with an employee attending to Association or Union business.

(4) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours.

(5) An employee shall not be entitled to paid leave to attend Association or Union business other than as prescribed by this clause.

(6) The provisions of this clause shall not apply to—

(a) Special arrangements made between the parties which provide for unpaid leave for employees to conduct Association or Union business.

(b) When an employee is absent from work without the approval of the employer; and

(c) Casual employees or officers.

18.—SPECIAL PROVISIONS

(1) Employees required to work after 11.00pm shall be entitled to have transport provided or be paid an allowance for use of their private motor vehicle from work to their residence.

(2) Recreational facilities, change and rest rooms and any other facility not otherwise reserved from time to time for use of Members of Parliament or designated senior staff shall be available to all employees during working hours.

19.—ALLOWANCES

(1) Subject to the provisions of this award, the Public Service General Conditions of Services and Allowances Award No. PSA A4 of 1989, and any amendments thereto or replacements thereof, shall be deemed to have been made between the parties to this award and shall apply to Parliamentary Officers mutatis mutandis.

(2) Subject to the provisions of this award, the following provisions of the Public Service General Conditions of Services and Allowances Award No. PSA A4 of 1989, and any amendments thereto or replacements thereof, shall be deemed to have been made between the parties to this award and shall apply to Parliamentary Support Service Employees—

Clause 18.—Motor Vehicle Allowance

Clause 19.—Overtime Allowance

Clause 21.—Shift Work Allowance

20.—RECORDS AND INFORMATION

(1) The employer shall keep or cause to be kept a time and salaries record showing—

(a) the name of each employee;

(b) the nature of the work performed;

(c) the hours worked each day;

(d) the salary, allowances and overtime paid to each employee.

Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) (a) The time and salary record shall on demand be produced for inspection by the General Secretary or duly accredited official of the Association or the Union during the employer's usual office hours and when necessary the duly accredited official of the Association or the Union may take a copy of the record.

(b) The Association or the Union shall—

(i) give prior notification to the employer on when it proposes to inspect the record;

(ii) not conduct interviews whilst a House is sitting;

(iii) treat with confidentiality any information obtained from time and salary records.

(c) The employer's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the Association or the Union calls to inspect it, the record will be made available for inspection at a mutually convenient time at the employer's office.

(3) If the employer maintains a personal or other file on an employee, the employee shall be entitled to examine all material maintained on that file.

(4) The employer shall ensure that sufficient copies of this Award are available for every employee covered by this Award.

21.—DEDUCTION OF SUBSCRIPTIONS

(1) The employer shall deduct normal Association or Union membership subscriptions as equal amounts each pay period, from the salary or wage of employees in accordance with each payroll deduction authority form.

(2) Payroll deduction authority forms shall be completed by employees. Where the employer requires a standard procuration form, that form shall be used.

(3) Where required by the employer, the Association or the Union, the General Secretary or person acting in his/her stead, shall countersign all forms and forward them to the employer's paymaster.

(4) (a) The employer shall commence deduction of subscriptions from the first pay 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 the authority is cancelled in writing by the employee.

(b) Where the payroll deduction authority form authorises the employer to deduct Association or Union subscriptions in accordance with the rules of the Association or the Union, the Association or the Union shall notify the employer in writing of the level of subscription to be deducted. The employer shall implement any change to subscriptions no later than one month after being notified by the Association or the Union except where the Association or the Union nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines are not the responsibility of the employer.

(b) Where a deduction is not made from an employee in any pay period, either inadvertently or as a result of an employee not being entitled to salary sufficient to cover the subscription, it shall be the employee's responsibility to settle the outstanding amount with the Association or the Union direct.

(6) The employer shall not make any deduction or subscriptions from an employee's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The employer shall forward contributions deduction, together with supporting documentation, to the Association or the Union at such intervals as are agreed between the employer and the Association or the Union.

22.—RIGHT OF ENTRY

The General Secretary or a duly authorised representative shall on notification to the employer have the right to enter the employer's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this Award, the legitimate business of the Association or the Union or for the purpose of investigating complaints concerning the application of this Award, but shall in no way unduly interfere with the work of employees or impinge on client's rights of privacy.

23.—PAYMENT OF SALARIES AND WAGES

(1) Salaries and wages shall be paid fortnightly but, where the usual pay day falls on a public holiday, payment shall be made on the previous working day.

(2) A fortnight's salary shall be computed by dividing the annual salary by 313 and multiplying the result by 12.

(3) The hourly rate shall be computed as 1/75th of the fortnight's salary for Parliamentary Officers and as 1/76th of the fortnight salary for PSSE's.

(4) Salaries and wages shall be paid by direct funds transfer to the credit of an account nominated by the employee at such Bank, Building Society or Credit Union approved by the Accountable Officer. Provided that where such form of payment is impracticable or where some exceptional circumstances exist, and by agreement between the employer, the Association and the Union, payment may be made by cheque.

24.—PARLIAMENTARY OFFICERS—SALARIES

(1) For the time being, the provisions of Public Service Salaries Agreement, 1985, No. PSA AG 5 of 1985 shall be applied by the employer to Parliamentary Officers covered by this award, including any variations thereto, at the same date and to the same extent until it is replaced.

(2) The employer shall allocate to Parliamentary Officers one or more of the salary levels prescribed in Agreement No. PSA AG 5 of 1985 or its replacement.

(3) The annual salaries applicable to officers covered by this award shall be as follows—

Level	Salary Per Annum	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	Total Salary Per Annum
	$	$	$
Level 1			
Under 17 years	10,445	642	11,087
17 years	12,207	750	12,957
18 years	14,238	876	15,114
19 years	16,481	1,014	17,495

Level	Salary Per Annum	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	Total Salary Per Annum
	$	$	$
20 years	18,507	1,140	19,647
1.1	20,331	1,251	21,582
1.2	20,983	1,251	22,234
1.3	21,634	1,251	22,885
1.4	22,281	1,251	23,532
1.5	22,932	1,251	24,183
1.6	23,583	1,251	24,834
1.7	24,332	1,251	25,583
1.8	24,850	1,251	26,101
1.9	25,616	1,251	26,867
Level 2			
2.1	26,533	1,251	27,784
2.2	27,236	1,251	28,487
2.3	27,975	1,251	29,226
2.4	28,756	1,251	30,007
2.5	29,573	1,251	30,824
Level 3			
3.1	30,696	1,251	31,947
3.2	31,571	1,251	32,822
3.3	32,473	1,251	33,724
3.4	33,399	1,251	34,650
Level 4			
4.1	34,669	1,251	35,920
4.2	35,664	1,251	36,915
4.3	36,688	1,251	37,939
Level 5			
5.1	38,660	1,251	39,911
5.2	39,993	1,251	41,244
5.3	41,378	1,251	42,629
5.4	42,815	1,251	44,066
Level 6			
6.1	45,126	1,251	46,377
6.2	46,697	1,251	47,948
6.3	48,323	1,251	49,574
6.4	50,059	1,251	51,310
Level 7			
7.1	52,721	1,251	53,972
7.2	54,563	1,251	55,814
7.3	56,567	1,251	57,818
Level 8			
8.1	59,824	1,251	61,075
8.2	62,157	1,251	63,408
8.3	65,050	1,251	66,301
Level 9			
9.1	68,663	1,251	69,914
9.2	71,104	1,251	72,355
9.3	73,888	1,251	75,139
Class 1	78,098	1,251	79,349
Class 2	82,308	1,251	83,559
Class 3	86,516	1,251	87,767
Class 4	90,726	1,251	91,977

(4) It is the term of this award or agreement that the Association undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or overaward except when consistent with the State Wage Principles.

24A.—ARBITRATED SAFETY NET ADJUSTMENT

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 Principles 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 November 1, 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.

25.—PARLIAMENTARY SUPPORT SERVICES EMPLOYEE WAGES

(1) The weekly wage applicable to PSSE's covered by this award shall be as follows—

(a) Classification	Base Rate Per Week	Arbitrated Safety Net Adjustment 1, 2 and 3	Total Rate Per Week
	$	$	$
Kitchen Hands and Gardeners			
1st year of service	372.08	24.00	396.08
2nd year of service	376.68	24.00	400.68
3rd year of service	380.58	24.00	404.58
Steward/Cleaner			
1st year of service	391.45	24.00	415.45
2nd year of service	395.96	24.00	419.96
3rd year of service	399.65	24.00	423.65
Steward/Cleaner and Relieving Bar Attendant			
1st year of service	401.69	24.00	425.69
2nd year of service	406.41	24.00	430.41
3rd year of service	410.82	24.00	434.82
Cook (Cakes and Second)			
1st year of service	414.51	24.00	438.51
2nd year of service	419.32	24.00	443.32
3rd year of service	423.53	24.00	447.53
Assistant Chief Steward			
1st year of service	425.17	24.00	449.17
2nd year of service	431.53	24.00	455.53
3rd year of service	437.27	24.00	461.27
Horticulturist (Certificate)			
1st year of service	433.27	24.00	457.27
2nd year of service	438.60	24.00	462.60
3rd year of service	442.95	24.00	466.95
Tradesperson Cook			
1st year of service	454.79	24.00	478.79
2nd year of service	459.10	24.00	483.10
3rd year of service	462.89	24.00	486.89
Chef, Chief Steward and Bar Attendant			
1st year of service	491.90	24.00	515.90
2nd year of service	498.15	24.00	522.15
3rd year of service	504.61	24.00	528.61
Foreperson of Horticulture			
1st year of service	478.27	24.00	502.27
2nd year of service	483.19	24.00	507.19
3rd year of service	487.39	24.00	511.39

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 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, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) Apprentices: The weekly wage rate shall be a percentage, as hereunder, of the tradesperson's rate—

Five Year Term	%
First Year	40
Second Year	48
Third Year	55
Fourth Year	75
Fifth Year	88
Four Year Term	
First Year	42
Second Year	55
Third Year	75
Fourth Year	88
Three and a Half Year Term	
First Six Months	42
Next Year	55
Next Following Year	75
Final Year	88
Three Year Term	
First Year	55
Second Year	75
Third Year	88

For the purpose of this clause "Tradesperson's Rate" means the rate of pay for a tradesperson under this award.

(3) The following allowances shall be paid to Parliamentary Support Services Employees indexed according to State Wage decisions and shall be—

(a)	Chef	
	1st year	$ 85.40 per fortnight
	2nd year	$170.90 per fortnight
(b)	Tradesperson Cook (Sous Chef)	
	1st year	$ 55.53 per fortnight
	2nd year	$ 85.40 per fortnight
(c)	Stewards to Speaker and President	$ 42.60 per fortnight

(4) An allowance of $24.80 per fortnight shall be paid to all PSSE's employed in the kitchen, dining room and bar areas.

26.—FIRST AID

The employer shall provide readily accessible first aid cabinets and a sick room for the use of employees in some reasonably accessible location within the employer's premises.

27.—BREAKAGES

The employer shall not charge a sum against, nor deduct any sum from the salary of an employee in respect of breakages of crockery, tools, implements or other utensils supplied by the employer for use by the employee, except in the case of wilful misconduct.

28.—UNIFORMS AND CLOTHING

(1) The employer shall provide at the employer's expense issues of uniforms and clothing for employees pursuant to an agreement between the employer, the Association and the Union. Each employee concerned shall receive an initial issue as per that agreement at the time such employee commences employment, with additional issues to be supplied by the employer as per that agreement.

(2) Such uniforms supplied shall be laundered and/or dry cleaned by the employer and remain the property of the employer, provided that in lieu of the employer laundering and/or dry cleaning same, an employee shall be paid $4.00 per week for such laundering and/or dry cleaning, excepting any person employed as a Cook who shall be paid $6.00 per week for laundering and/or dry cleaning.

(3) For the purposes of this clause a uniform shall consist of such articles of clothing as monogrammed or coloured jackets, dresses, blouses, overalls, aprons, caps, collars, cuffs, or other special apparel which the employer may require an employee to wear whilst on duty, and shall also include the ordinary apparel usually worn by a Cook, such as black and white check or white trousers, white coats, white shirt, white apron and cap.

(4) Individual protective clothing and footwear shall be available to Kitchen and Garden PSSE's when—

(a) they are required to wash dishes, handle detergents, acids, soaps or any injurious substances;

(b) conditions are such that they are unable to avoid their clothing becoming dirty or wet or are unable to avoid their feet becoming wet;

(c) operating equipment or machinery which may be dangerous to exposed portions of the body or omit fumes or noise.

29.—PRESERVATION AND NON-REDUCTION

(1) No rights, privileges or entitlements presently granted to an employee shall be withdrawn or ceased unless expressly agreed to by the employer and the employee.

(2) Nothing herein contained shall enable the employer to reduce the salary or wage of an employee or conditions of work applied to any employee who at the date of this Award was being paid a higher rate of salary or wage than the minimum prescribed in this Award or was being accorded a benefit superior to any contained herein as a condition of work.

(3) An employee in receipt of a higher salary or wage than that prescribed by this Award shall continue to have that salary or wage adjusted according to State Wage Case decisions.

30.—SICK LEAVE

(1) (a) A PSSE shall be entitled to payment for non-attendance on the grounds of personal ill health or injury for 1/6th of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the PSSE leaves the service of the employer in the event of the PSSE being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in subclause (1) hereof in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the PSSE shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of this illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No PSSE shall be entitled to the benefit of this clause unless he produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a PSSE who suffers personal ill health or injury during the time such PSSE is absent on annual leave, such PSSE may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the PSSE was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that the PSSE was so confined. Provided that the provisions of this paragraph do not relieve the PSSE of the obligation to advise the employer in accordance with subclause (3) of this clause if the PSSE is unable to attend for work on the working day next following the period of annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the PSSE was entitled at the time the PSSE proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraph (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the PSSE, or failing agreement,

shall be added to the PSSE's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of subclause (3) of Clause 12.—Annual Leave, of this Award.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in subclause (3) of Clause 12.—Annual Leave, of this Award shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to PSSE's who are entitled to payment under the Workers' Compensation and Assistance Act, 1981 nor to PSSE's whose illness or injury is the result of the PSSE's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

31.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A PSSE who becomes pregnant shall, upon production to the employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purpose of this clause—

(a) A PSSE shall include a part-time PSSE but shall not include a PSSE engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks compulsory leave to be taken immediately following confinement.

(b) A PSSE shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to the employer stating the presumed date of confinement.

(c) A PSSE shall give not less than four weeks notice in writing to the employer of the date upon which it is proposed that maternity leave commence stating the period of leave to be taken.

(d) A PSSE shall not be in breach of the provisions of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

Where, in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the PSSE make it inadvisable for the PSSE to continue at her present work, the PSSE shall, be transferred to a safe job at the rate and on the conditions attaching to the PSSE's classification or to that job whichever is higher until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the PSSE may, or the employer may require the PSSE to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer by the PSSE giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer be shortened by the PSSE giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a PSSE terminates other than by the birth of a living child.

(b) Where the pregnancy of a PSSE then on maternity leave terminates other than by the birth of a living child, it shall be the right of the PSSE 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 PSSE to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of a PSSE not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) the PSSE shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before the PSSE's return to work, or

(ii) for illness other than the normal consequences of confinement the PSSE shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which the officer is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where a PSSE not then on maternity leave suffers illness related to the pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.

(d) A PSSE returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a PSSE who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the PSSE is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) of this clause does not exceed 52 weeks.

(a) A PSSE may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave) shall not be available to a PSSE during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any Award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a PSSE but shall not be taken into account in calculating the period of service for any purpose of the Award.

(9) Termination of Employment

(a) A PSSE on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Award.

(b) The employer shall not terminate the employment of a PSSE 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.

(10) Return to Work After Maternity Leave

(a) A PSSE shall confirm an intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) A PSSE upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a PSSE who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the PSSE is qualified and the duties of which she is capable of performing, she shall be entitled to a position as comparable in status and salary to that of her former office.

(11) Replacement Employees

(a) A replacement PSSE is a PSSE specifically engaged as a result of a PSSE proceeding on maternity leave.

(b) Before the employer engages a replacement PSSE under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the PSSE who is being replaced.

(c) Before the employer engages a person to replace a PSSE temporarily promoted or transferred in order to replace a PSSE exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the PSSE who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring the employer to engage a replacement PSSE.

(e) A replacement PSSE shall not be entitled to any of the rights conferred by this clause except where the employment continues beyond the 12 months' qualifying period.

32.—NO EXTRA CLAIMS

It is a term of this Award that the Union undertakes, for the duration of the Principles determined by the Commission in Court Session in Application No. 1940 of 1989, not to pursue any extra claims, award or over award except when consistent with the State Wage Principles.

33.—PART-TIME EMPLOYMENT

(1) Notwithstanding the provisions of clause 6.—Hours of Duty of this award a PSSE may be employed on a part-time basis.

(2) (a) Each permanent part-time arrangement shall be confirmed by the employer in writing and should include the hours to be worked daily and weekly by the employee, including starting and finishing times, which shall hereinafter be referred to as "ordinary working hours".

(b) The employer shall given an employee one (1) month's notice of any proposed variation to that employee's ordinary working hours, provided that the employer shall not vary the employee's total weekly hours of duty without the employee's prior written consent.

(3) The provisions of clause 7.—Overtime of this award shall apply to all time worked outside the ordinary working hours prescribed by subclause (1)(a) of this clause.

(4) An employee employed on a part-time basis shall be paid a proportion of the appropriate full-time wage dependent upon time worked. The wage shall be calculated in accordance with the following formula—

$$\frac{\text{Hours Worked Per Fortnight}}{76} \times \frac{\text{Full-time Fortnightly Wage}}{1}$$

(5) PSSE's shall be granted leave in accordance with clause 12.—Annual Leave of this award. Wages payable during the period of leave shall be calculated in accordance with the formula in subclause (4) of this clause based on the fortnightly wage at the time the leave is taken.

(6) PSSE's shall be entitled to the provisions of clause 30.—Sick Leave of this award provided that where such PSSE is employed for less than 76 hours per fortnight, the credits shall be pro-rated according to the number of hours worked each fortnight. Payment made for sick leave granted in respect of part-time service shall be calculated in accordance with the formula set out in subclause (4) of this clause.

(7) PSSE's are entitled to the holidays prescribed in clause 11.—Public Holidays of this award without variation of the employee's fortnightly wage provided the holidays occur on a day which is normally worked.

(8) PSSE's are entitled to the provisions of clause 15.(1)(d),(e),(f) and (h)—Leave of Absence and clauses 16.—Trade Union Training Leave, 17.—Leave to Attend Union Business and 19.—Allowances of this award, provided that where such employee is employed for less than 76 hours per fortnight, the entitlements shall be pro-rated according to the number of hours worked each fortnight.

(9) PSSE's employed on a part-time basis shall be entitled to the provisions of clause 31.—Maternity Leave of this award.

(10) (a) Where a full-time employee is permitted, at his or her initiative, to work part-time for a period no greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, that officer has a right (upon written application) to revert to full-time hours in that position as soon as deemed practicable by the employer, but no later than the expiry of the agreed period.

(b) A full-time employee who is permitted at his or her initiative to work part-time for a period greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the employer.

This should not prevent the transfer of said employee to another full-time position at a salary commensurable to that of his or her previous full-time position.

(c) A part-time employee who was previously a full-time employee within the organisation, who occupies a part-time office which was the initiative of management and who desires to revert to full-time employment will be required to seek promotion or transfer to full-time position by—

(i) application for advertised vacancies; and/or

(ii) by notification in writing to the employer of his or her desire to revert to full-time employment.

(d) Nothing in paragraph (c) hereof shall prevent the employer, with the written consent of the employee, transferring that employee to a full-time position with a wage rate less than the employee's substantive position.

Prior to effecting the transfer of an employee under this subclause, the employer shall—

(i) notify the employee of the specific position to which the employer proposes to transfer the employee and

(ii) obtain the written consent of the employee to his or her transfer to that position.

34.—CASUAL EMPLOYMENT

(1) Casual employment shall only apply to PSSE's and shall mean—

(a) an employee engaged by the hour in any period of engagement as determined by the employer; or

(b) an employee engaged on an hourly rate of pay by agreement between the Union or Association and the employer.

(2) A casual employee shall not be engaged for less than 2 consecutive hours per time.

(3) A casual employee shall be paid for each hour worked at the appropriate classification in this award in accordance with the following formula—

$$\frac{\text{Fortnightly Wage}}{76}$$

with the addition of twenty percent in lieu of annual leave, sick leave, long service leave and payment for public holidays.

(4) Allowances provided for by this award shall not apply to a casual employee. However, where expenses are directly and necessarily incurred by a casual employee in the ordinary performance of his/her duties, he/she shall be entitled to reimbursement in accordance with the provisions of this award.

(5) The employment of a casual employee may be terminated at any time by the giving of one hour's notice on either side, or the payment or forfeiture, as the case may be, of one hour's pay.

35.—APPRENTICES

Apprentices may be taken in the ratio of one apprentice for every two or fraction of two (the fraction being not less than one) journeymen and shall not be taken in excess of that ratio unless—

(a) The union or unions concerned so agree; or

(b) The Commission so determines.

36.—HIGHER DUTIES ALLOWANCE—PARLIAMENTARY SUPPORT SERVICE EMPLOYEES

(1) A PSSE who performs duties which carry a higher minimum rate than that which such PSSE usually performs shall be entitled to the higher minimum rate while so employed.

(2) Where such PSSE is engaged in the higher grade of work for more than two hours on any day or shift, the employee shall be paid the higher rate for the whole day or shift.

(3) Notwithstanding the provisions of this clause payment for higher duties shall not apply to a PSSE required to act in another position while the permanent PSSE is on a single Accrued Day Off.

37.—ESTABLISHMENT OF CONSULTATIVE MECHANISMS

The Association and the Union are required to establish a consultative mechanism/s and procedures appropriate to their size, structure and needs, for consultation and negotiation on matter affecting the efficiency and productivity of the Public Sector.

38.—AWARD MODERNISATION

(1) The Association and the Union are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current Award Agreement structure the parties are prepared to discuss all matters raised by the parties for increased flexibility and efficiency. As such, any discussions between the parties must be premised on the understanding that—

(a) the majority of employees employed in the section, branch or division must genuinely agree;

(b) no employee will suffer a reduction in ordinary earnings as a result of the change;

(c) the Association and/or the Union, as applicable, must be party to the agreement, in particular, where the employees at any section, branch or division are holding discussions which would require any award variation. The Association and/or the Union shall be invited to participate.

(d) the Association and/or the Union shall not unreasonably oppose any agreement;

(e) subject to the provisions of this award, any agreement reached may require ratification by the Commission.

(3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose the award variation.

(4) There shall be no limitation on any award matter being raised for discussion.

39.—INTRODUCTION OF CHANGE

Employers duty to notify

Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes in accordance with s.41 of the Minimum Conditions of Employment Act 1993.

40.—REDUNDANCY

(1) Definitions

Except where otherwise provided, pay means—

(a) the award rate of pay, excluding allowances, applicable to the substantive classification of the employee of the pay or, where the employee does not have a substantive classification, the rate of pay, excluding allowances, under his or her contract of employment;

(b) an enterprise bargaining allowance as defined in the Public Sector Management (Redeployment and Redundancy Regulations) 1994;

(c) an allowance for an employee being in charge of other employees; and

(d) a tally or piece rate;

but does not include an allowance of any other kind.

"Redundancy" means a situation when a job performed by an employee ceases to exist or becomes surplus to requirements.

(2) Redeployment

(a) With respect to each employee whose position is declared redundant, the employer, unless otherwise agreed, shall attempt to redeploy the employee to suitable alternative employment within Parliament House. In the event that no suitable alternative employment is available, the employee shall be entitled to the benefits set out in sub-clause 4 of this clause.

(b) Where it is possible to redeploy the employee to a new employer within Parliament House, annual leave and long service leave accrued prior to the date of redeployment shall be calculated in accordance with this Award and transferred to and credited by the new employer.

(c) Suitable alternative employment shall be defined as that which provides an employee with a position which;

(i) is a position where the ordinary hours of duty being in general no less than those worked by the employee in his/her substantive position, with a Parliament House employer, unless otherwise agreed;

(ii) has a wage or salary as close as practicable to that of the employee's substantive position; and

(iii) has regard to the relevance of the duties and responsibilities, qualifications, experience, and the competence of the employee.

(3) Leave and assistance to seek alternative employment

The employer shall facilitate redeployment by granting employees who have been made redundant up to one day's paid leave to attend interviews and career counselling without loss of pay.

(4) Severance pay

(a) Each employee identified as being surplus to the employer's requirement and for whom suitable alternative employment cannot be found shall be entitled to the benefits of this subclause.

(b) Where an employee identified as surplus to requirements is able to carry out the duties and responsibilities in an equivalent manner to an employee not identified as surplus, the latter, with the approval of the employer, may elect to resign in place of the former, in which case the benefits of this subclause shall apply to that employee.

(c) Each employee referred to in paragraphs (a) and (b) hereof shall receive a severance payment from the employer in accordance with the following formula—

(i) two weeks pay for each completed year of continuous service provided that the maximum entitlement shall be of 46 weeks' pay;

(ii) continuous service shall have the same meaning as that prescribed in the Wages Employees Long Service Leave General Order ((1986) 66 WAIG 319) as amended from time to time.

(5) Payment for leave entitlements—

In addition to the severance payments prescribed by subclause 4(c) of this clause, employees shall also receive—

(a) pro rata annual leave.

(b) pro rata long service leave calculated on each completed twelve (12) months of service in accordance with the terms and conditions of entitlement available pursuant to Clause 13.—Long Service Leave or Clause 15.—Leave of Absence, of this Award, as appropriate.

(c) leave loading on accrued annual leave.

(d) as part of the definition of pay, for the purpose of severance, any allowance of the kinds that has been paid continuously for the preceding 12 months including—

(i) an allowance for temporary undertaking duties other than those of the substantive office, post or position of the relevant employee;

(ii) a higher duties allowance; and

(iii) a shift allowance which is paid on a regular basis including during periods of annual leave.

(6) Exempt employees

This clause does not apply to—

(a) employees retired on grounds of ill health;

(b) employees whose employment is terminated as a consequence of poor performance or misconduct on the part of the employee;

(c) an employee where an agreement has been reached between the employee and the employer that the employee is only engaged for a defined period under a fixed term contract at the conclusion of which the employment shall cease; or

(d) casual employees.

(7) Minimum provisions

The provisions of this clause are minimum provisions.

41.—NAMED PARTIES

The named parties to the Award are—

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

The Civil Service Association of Western Australia Incorporated.

Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers.

The Governor of Western Australia in Council.

The President of the Legislative Council.

The Speaker of the Legislative Assembly.

RECREATION CAMPS (DEPARTMENT FOR SPORT AND RECREATION) AWARD
No. A 28 of 1985.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 7th day of May, 1997.

J. CARRIGG,
Registrar.

RECREATION CAMPS (DEPARTMENT FOR SPORT AND RECREATION) AWARD
No. A 28 of 1985.

1.—TITLE

This award shall be known as the Recreation Camps (Department for Sport and Recreation) Award.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
1A Statement of Principles—August 1996
2. Arrangement
3. Area and Scope
4. Definitions
5. Contract of Service
6. Hours
7. Part Time Employees
8. Overtime
9. Saturday and Sunday Work
10. Annual Leave
11. Public Holidays
12. Sick Leave
13. Conditions and Allowances
14. Long Service Leave
15. Wages
16. Higher Duties
17. Special Rates and Conditions
18. Change Rooms and Mess Facilities
19. Protective Clothing and Equipment
20. Transfers and Termination
21. No Reduction
22. Uniforms
23. Liberty to Apply

Appendix—Resolution of Disputes Requirement
Schedule A—Parties to the Award
Schedule B—Respondents

3.—AREA AND SCOPE

This award shall apply to all employees in the callings set out in Clause 15.—Wages of this award who are employed by the Department for Sport and Recreation.

4.—DEFINITIONS

(1) "Warden-In-Charge" shall mean an employee appointed as such, who is in control of a camp.

(2) "Mobile Warden" shall mean an employee who is required to move from camp to camp as the employer requires and for that purpose may be required to supply and maintain mobile accommodation.

(3) "Assistant Warden" shall mean an employee who generally works under the supervision and control of a Warden and who may be expected to assume control of a camp in the absence of the Warden in Charge.

(4) "Ranger" shall mean an employee appointed as such whose duties shall include the patrolling of a specified area of land.

(5) "Casual Employee" shall mean an employee who is appointed as such and who is engaged to work for less than four weeks.

(6) "Camp" shall mean the buildings and environs of a site designated a recreation camp or other land controlled by the Department for Sport and Recreation.

(7) "Employer" shall mean the Department for Sport and Recreation.

(8) "Union" shall mean the Federated Miscellaneous Workers' Union of Australia, Hospital, Service & Miscellaneous, W.A. Branch.

(9) "Part time Employee" means an employee who is engaged to work fixed hours on any five days of the week and who regularly works a lesser number of hours than 38 per week.

(10) "Accrued Day(s) Off" means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 6.—Hours.

5.—CONTRACT OF SERVICE

(1) Except in the case of a casual employee, the contract of service of every employee shall be by the fortnight and shall be terminable by a fortnight's notice on either side, given on any working day, or, in the event of such notice not being given by the payment of a fortnight's wages by the employer or the forfeiture of a fortnight's wages by the employee.

(2) The engagement of a casual employee may be terminated with one hour's notice. Provided that all wages due to him/her shall be paid immediately upon the termination of his/her engagement.

(3) Notwithstanding the provision of subclause (1) of this clause a period of notice of less or more than a fortnight may be given if mutually agreed to between employer and employee.

(4) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of Clause 12.—Sick Leave, or such absence is on account of holidays or approved leave to which the employee is entitled under the provisions of this award.

(5) This clause does not affect the employer's right to dismiss an employee for misconduct and an employee so dismissed shall be paid wages up to the time of dismissal only.

(6) An employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions.

6.—HOURS

(1) Subject to the provisions of this clause, the ordinary hours of work shall be an average of 38 per week with the hours actually worked being 40 per week to be worked eight hours per day on five days of each week between the hours of 7.00am and 6.00pm.

(2) The ordinary hours of work will be worked between Monday and Friday except for those employees who receive the loading prescribed in Clause 15.—Wages of this award for no fixed hours of duty. Such employees shall work their ordinary hours at any time on any five days of the week as required.

(3) (a) Except where provided elsewhere in this clause, the ordinary hours shall be worked with two hours of each week's work accruing as an entitlement to a maximum of 12 Accrued Day(s) Off in each 12 month period.

(b) The Accrued Day(s) Off may be taken either in conjunction with annual leave or at a time mutually acceptable to the employer and employee. Provided that such Accrued Day(s) Off are taken within the 12 month period of accrual and to suit the operational requirements of the employer.

(4) The employer and employee may by agreement substitute the Accrued Day Off the employee is to take off for another day in which case the Accrued Day Off shall become an ordinary working day.

(5) The provisions of this clause apply to a part time employee in the same proportion as the hours normally worked bear to a full time employee.

7.—PART TIME EMPLOYEES

(1) Notwithstanding anything contained herein, an employer shall be at liberty to employ part-time employees.

(2) Part-time employees who work less than 16 hours per week shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged only in the proportion which their ordinary weekly hours bear to 38.

(3) Part-time employees shall be allowed annual leave and payment for such as prescribed in Clause 10.—Annual Leave or subclause (3) of Clause 6.—Hours of this award in the same ratio as their ordinary weekly hours averaged over the qualifying period, bear to 38.

(4) Part-time employees shall be allowed sick leave in the same manner as full-time employees excepting that payment for such leave shall be in the same ratio as their ordinary weekly hours, averaged over the qualifying period, bear to 38.

8.—OVERTIME

(1) (a) Where overtime is worked on Saturdays prior to 12 noon the employee shall be paid at the rate of time and one half for the first two hours and double time thereafter.

(b) Overtime worked after 12 noon of Saturdays shall be paid at the rate of double time.

(c) All overtime performed on Sundays shall be paid at the rate of double time.

(d) All overtime performed on a public holiday shall be paid at the rate of double time and one-half.

(2) Except as otherwise provided in this clause, all time worked in excess of or outside the usual hours of work shall be overtime and paid for at the rate of time and one half for the first two hours and double time thereafter.

(3) The provisions of subclauses (1) and (2) of this clause shall not apply to employees who receive the loading prescribed in Clause 15.—Wages for no fixed hours of duty. Provided that if an employee so specified is required by the employer to work on his/her day off duty he/she shall be paid at the rate of double time for that whole day.

(4) Casual employees shall be paid at the rate of time and one-half for the first two hours and double time thereafter at the appropriate proportion of the ordinary rate as prescribed in Clause 15.—Wages of this award for all time worked in excess of eight hours in any one day.

(5) The employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

(6) In computing overtime each day shall stand alone but when an employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this subclause.

(7) (a) When overtime is necessary it shall, wherever reasonably practicable be so arranged that employees have at least 10 consecutive hours off duty between the work on successive days.

(b) An employee who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least 10 consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of his employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty, he shall be paid at double time rates until he is released from duty for such period and he shall then be entitled to be absent until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) Where an employee other than an employee who receives the loading prescribed in Clause 15.—Wages for no fixed hours of duty, is called into work on a Sunday or holiday preceding an ordinary working day, he/she shall, wherever reasonably practicable, be given 10 consecutive hours off duty before his/her usual starting time on the next day. If this is not practicable, then the provisions of paragraphs (b) and (c) of this subclause shall apply mutatis mutandis. Provided that overtime worked as a result of a recall, shall not be regarded as overtime for the purpose of this paragraph, when the actual time worked is less than three hours on such recall or on each such recall.

(8) An employee who is recalled to work after leaving the camp shall be paid a minimum of three hours at the appropriate overtime rate and reasonable expenses incurred in travelling to and from work.

(9) (a) An employee required to work continuous overtime for more than one hour shall be supplied with a meal by the employer or be paid $6.60 for a meal, and if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or be paid $3.85 for each meal so required.

(b) The provisions of paragraph (a) of this subclause do not apply—

(i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he will be required; or

(ii) to any employee who lives in the locality in which the place of work is situated who can reasonably return home for meals; or

(iii) where the overtime worked is outside the customary meal time.

(c) If an employee provides himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he/she shall be paid for each meal provided and not required, the appropriate amount prescribed in paragraph (a) of this subclause.

(d) An employee required to work continuously from midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. on the same day shall be paid $3.40 for breakfast.

(e) The provisions of this subclause do not operate so as to require payment of more than double time rates, or double time and one half on a holiday prescribed under this award for any work.

(10) If when the meal time customary in the industry arrives, an employee is required to continue working and his/her meal interval is thereby deferred, he/she shall be paid at overtime rates until he/she gets a meal interval of the customary duration.

(11) Provided that if the continuance of work is reasonably necessary and could not have been avoided by any reasonable action of the employer, the employer shall be allowed time not exceeding 20 minutes before such penalty rate begins to accrue.

(12) (a) By agreement between the employee and employer, time off in lieu of payment for overtime may be granted proportionate to the payment to which the employee is entitled. Such time off is to be taken in unbroken periods according to each period of overtime worked.

(b) The actual period of time off may be accrued and taken at a time agreed between the employer and employee concerned.

9.—SATURDAY AND SUNDAY WORK

(1) All ordinary time worked between midnight on Friday and midnight on Saturday shall be paid at the rate of time and one half. All ordinary time worked on Sunday shall be paid at the rate of double time.

(2) The provisions of this clause shall not apply to employees whose ordinary hours of work are spread over any five days of the week and who receive the loading prescribed in Clause 15.—Wages of this award.

10.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his/her employer after a period of 12 months' continuous service with such employer.

(b) The total annual leave entitlement may, by agreement between the employee and the employer, be taken in more than one portion. Provided that no portion is less than one week.

(2) If any holiday referred to in Clause 11.—Public Holidays of this award falls within an employee's period of annual leave there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(3) If after completing one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.92 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service in that qualifying period.

(4) Ordinary wages for an employee shall mean the rate of wage the employee has received for the greatest portion of the calendar month prior to taking his/her annual leave including the loading prescribed in Clause 15.—Wages of this award for those employees who work no fixed hours of duty.

(5) Prior to commencing any period of annual leave each employee shall be paid for that period of leave at the rate of wage he/she would have received in respect of ordinary time he/she would have worked had he/she not been on leave during the relevant period. Provided that—

(a) where an employee has worked less than the full time hours per week specified in Clause 6.—Hours of this award over the accrual period for which annual leave is being taken, the hours for which payment is made shall be calculated on an average of the number of hours worked per week during the accrual period.

(b) In addition to the payment prescribed for annual leave an employee shall receive a loading of 17.5 percent. calculated on the rate of wage prescribed by subclause (4) of this clause.

(6) In addition to any payment to which he/she may be entitled under subclause (1), (2) and (3) of this clause, an employee whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period, shall be given payment in lieu of that leave and the loading prescribed in subclause (5) hereof unless—

(a) he/she has been justifiably dismissed for misconduct; and

(b) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(7) An employee may be granted annual leave with payment of ordinary wages as prescribed prior to his/her having completed a period of 12 months' continuous service, in which case should the services of such employee terminate or be terminated prior to the completion of 12 months' continuous service, the said employee shall refund to the employer the difference between the amount received by him/her for wages in respect of the period of his/her annual leave and the amount which would have accrued to him/her by reason of the length of his/her service up to the date of the termination of his/her services.

(8) (a) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave, long service leave and/or holidays or other approved leave. Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of any such period shall count as service for the purpose of computing annual leave.

(9) Employees regularly working north of South Latitude 26 shall be allowed to accumulate annual leave for two years, subject to the convenience of the employer. Such employees who proceed to Perth and Geraldton during the period of such leave shall be allowed once in each two years reasonable travelling time on the forward and return journeys between the place of their employment and either of the said cities.

(10) The provisions of this clause shall not apply to casual employees.

11.—PUBLIC HOLIDAYS

(1) (a) The following days, or the days observed in lieu shall, subject as hereinafter provided, be allowed as holidays, without deduction of pay, namely—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties, in lieu of any of the days named in the subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday, and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall

be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) Where—

(a) a day is proclaimed as a public holiday or as a public half holiday under Section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a public holiday or, as the case may be a public half holiday for the purposes of this award within the district or locality specified in the proclamation.

(3) (a) Whenever any of the days referred to in paragraph (a) of subclause (1) of this clause fall on an employee's ordinary working day and the employee is not required to work on such day he/she shall be paid for the ordinary hours he/she would have worked on such day had it not been a holiday.

(b) An employee who, on any day observed as a holiday under this clause, is required to work during his/her ordinary hours of work, shall be paid for the time worked at the rate of double time and one-half.

(c) Provided that in lieu of provisions in paragraph (b) of this subclause and subject to agreement between the employer and the employee, work performed on a public holiday may be paid for at the rate of time and one-half for time worked and in addition the employee shall be allowed one day's leave with pay which may be taken as follows—

(i) in conjunction with annual leave; or

(ii) at any time within a 12 month period mutually acceptable to the employer and the employee.

(4) When the employee is absent on leave without pay, sick leave without pay or workers' compensation any day falling during such absence shall not be treated as a paid holiday. Where the employee is on duty or available for duty on the working day immediately preceding a holiday, or resumes duty or is available on the working day immediately following a day observed as a holiday as prescribed in this clause, the employee shall be entitled to be paid for such holiday.

(5) When any of the days observed as a holiday under this clause fall during an employee's annual leave, the employee shall, for each such day, be allowed a day's leave with pay to be taken immediately after completion of that annual leave.

12.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the ground of personal ill health or injury for 1/6th of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the employee leaves the service of the employer in the event of the employee being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portions of the entitlement prescribed in subclause (1) hereof in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No employee shall be entitled to the benefit of this clause unless he/she produces proof to the satisfaction of the employer or his/her representative of such sickness provided that the employer shall accept as satisfactory proof a statutory declaration or like proof where by reason of remoteness from medical facilities it is impractical to procure a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he/she is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a) and (b) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 10.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 9.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 1981 nor to employees whose injury or illness is the result of the employee's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

13.—CONDITIONS AND ALLOWANCES

The provisions of the Miscellaneous Government Conditions and Allowances Award No. A4 of 1992 shall apply mutatis mutandis to all employees covered by this award.

14.—LONG SERVICE LEAVE

(1) The conditions governing the granting of long service leave to Government wages employees generally shall apply to employees covered by this award.

(2) When an employee proceeds on long service leave, there shall be no accrual towards an accrued day off in accordance with the provisions of subclause (1) of Clause 6.—Hours of this award nor any credit accumulated for such periods of leave.

15.—WAGES

(1) The minimum weekly rate of wage payable to employees under this Award shall be as follows—

	Per Week $	Arbitrated Safety Net Adjustments 1, 2 and 3 $	Per Week $
(a) Warden-in-Charge			
1st year of employment	409.70	24.00	433.70
2nd year of employment	413.50	24.00	437.50
3rd year of employment and thereafter	417.40	24.00	441.40
(b) Mobile Warden			
1st year of employment	404.20	24.00	428.20
2nd year of employment	408.00	24.00	432.00
3rd year of employment and thereafter	411.80	24.00	435.80
(c) Assistant Warden			
1st year of employment	388.10	24.00	412.10
2nd year of employment	391.90	24.00	415.90
3rd year of employment and thereafter	395.80	24.00	419.80
(d) Ranger			
1st year of employment	390.30	24.00	414.30
2nd year of employment	394.10	24.00	418.10
3rd year of employment and thereafter	404.90	24.00	428.90
(e) Noalimba Night Supervisor			
1st year of employment	404.20	24.00	428.20
2nd year of employment	408.00	24.00	432.00
3rd year of employment and thereafter	411.80	24.00	435.80

(f) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) Provided that the rate of pay referred to in subclause (1) of this clause shall increase by 15% for employees where such employees' ordinary hours of work are worked over any five days of the week as prescribed by Clause 6.—Hours of this Award.

(3) Supervision Allowance

Employees placed in charge of other employees shall be paid the following weekly allowance, or part thereof, in addition to the rate prescribed for the employee's class of work

	$ Per Week
1 to 5 employees	6.77
6 to 10 employees	12.17
11 to 15 employees	15.18
16 to 20 employees	20.63
over 20 (for each additional employee)	0.23

(4) Casual employees shall be paid 20% in addition to the rates otherwise payable under this clause.

(5) The term "year of employment" in this clause shall mean years of service with the employer irrespective of classification.

16.—HIGHER DUTIES

(1) (a) An employee other than an Assistant Warden who performs duties which carry a higher minimum rate than that which such employee usually performs shall be entitled to the higher minimum rate while so employed.

(b) Where such employee is engaged in the higher grade of work for more than two hours in any one day, the employee shall be paid the higher rate for the whole day.

(2) An Assistant Warden who is authorised to perform the duties of a Warden's position shall, after a period of two hours, be paid the appropriate rate for such duties.

17.—SPECIAL RATES AND CONDITIONS

(1) All employees called upon to clean toilet closets shall receive an allowance of 49 cents per closet per week and for these purposes, one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(2) An employee who is the holder of an approved First Aid Certificate shall in addition to their normal rate of pay be paid an additional allowance of $1.64 per week.

(3) An employee where practicable shall not be required to work from the top of a ladder more than 3.5 metres long which rests on the ground or floor level unless provided with an assistant.

(4) Mobile Wardens shall in addition to their normal rate of pay be paid an allowance of $63.50 per week to offset the costs associated with living in and maintaining a caravan. This allowance shall be reviewed on the 31st December each year. The adjustment to the rates shall be effective from the beginning of the first pay period to commence on or after the first day of January in each year.

(5) The provisions of the Public Service Camping Allowance Agreement 1985 shall apply mutatis mutandis to this award.

18.—CHANGE ROOMS AND MESS FACILITIES

(1) (a) Suitable dressing accommodation for employees who do not live on site shall be provided by the employer where employees may change their clothes. Tools and appliances shall not be kept in the dressing room.

(b) All employees shall be provided with facilities for boiling water.

(c) Employees shall be permitted to eat their meals in a convenient and clean place, protected from the weather, and each such employee shall remove all litter and foodstuff after use.

(d) Where practicable the employer shall provide suitably equipped messing and toilet facilities.

19.—PROTECTIVE CLOTHING AND EQUIPMENT

(1) Goggles, safety helmets, climbing boots, respirators, oilskins, gumboots, sou'westers, wet weather clothing, suitable gloves and any other such clothing and equipment deemed necessary by the employer shall be supplied to employees covered by this award where the nature of the employment is such as to warrant their respective use.

(2) The clothing and equipment issued pursuant to this clause shall remain the property of the employer and shall be replaced on a fair wear and tear basis.

(3) Safety boots issued pursuant to this clause shall be worn at all times deemed necessary by the employer. Any employee not wearing safety boots at times deemed necessary by the employer will not be allowed to commence work and will not be paid for any time lost as a result.

(4) All employees called upon to clean toilets shall on request be supplied with rubber gloves.

(5) All materials, appliances and tools required in connection with the performance of the employee's duties shall be supplied to such employee by the employer without charge.

(6) In every case where the employer requires an employee to wear a uniform for his work the same shall be supplied by the employer.

20.—TRANSFERS AND TERMINATION

(1) An employee, promoted or transferred by the employer in the normal course of his employment shall be reimbursed for all reasonable expenses actually incurred in connection with such transfer or promotion.

(2) An employee transferred at his/her own request, or for disciplinary reasons, will be responsible for his/her own removal expenses.

(3) An employees, whose services are terminated by the employer through no fault of the employee shall be reimbursed for reasonable removal expenses incurred in returning from the place of employment to his/her original place of engagement.

(4) All travelling time in connection with promotion, transfer or termination pursuant to subclauses (1) and (3) of this clause shall be paid for at a maximum travelling time per day of eight hours at the rate applicable to the time of day and the day of the week.

21.—NO REDUCTION

Nothing contained herein shall in itself operate so as to reduce the wages and conditions of any employee who at the date of this award is being paid above the minimum rate and/or conditions prescribed for his/her class of work.

22.—UNIFORMS

In addition to clause 22.—Protective Clothing and Equipment each employee shall be provided by the employer with a uniform on the basis set out herein—

(1) The following uniform issue shall be replaced on a fair wear and tear basis—

4 shirts or 2 long sleeve shirts, and 2 short sleeve shirts
4 pairs of trousers or 2 pairs trousers and 2 pair shorts
1 belt
1 jumper/cardigan
1 castro jacket
1 hat (optional)
1 tie (optional)
4 pairs socks
1 pair boots or shoes.

(2) The employee shall be responsible for the laundering of any such uniforms so supplied.

23.—LIBERTY TO APPLY

Liberty is reserved for the term of this award to the Union to apply to amend with respect to;

(1) the quantum of the loading prescribed for employees in Clause 15.—Wages of this award, where such employee's ordinary hours of work are worked over any five days of the week subject to Clause 6.—Hours of this award;

(2) the quantum of wage rates prescribed for all classifications in Clause 15.—Wages of this award.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

Dated at Perth this 6th day of December

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

The Hon. Minister for Sport and Recreation, Perry Lakes Stadium, WEMBLEY WA 6014

THE SUGAR REFINING AWARD
No. A 41 of 1982.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 2nd day of May, 1997

J. CARRIGG,
Registrar.

The Sugar Refining Award

1.—TITLE

This award shall be known as "The Sugar Refining Award" and shall replace Award No. 39 of 1981.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the $8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
1A Statement of Principles—August 1996
2. Arrangement
2A. State Wage Case Principles—June 1991
3. Term of Award
4. Area, Incidence and Parties
5. Definitions
6. Contract of Service
7. Wages and Allowances
8. Mixed Functions
9. Hours
10. Overtime
11. Time and Wages Record
12. Public Holidays
13. Annual Leave
14. Sick Leave
15. Long Service Leave
16. Compassionate Leave
17. Rights of Union Representatives
18. Award to be Posted
19. Apprentices
20. Protective Equipment
21. Rostered Day Off Duty
22. Maternity Leave
23. Training
24. Liberty to Apply

Appendix—Resolution of Disputes Requirement
Appendix 1—New Classifications (Transition)
Appendix 2—Parties to the Award
Appendix—S.49B—Inspection Of Records Requirements

2A.—STATE WAGE CASE PRINCIPLES—JUNE 1991

It is a term of this award that the unions party to the award undertake, for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991, not to pursue any extra claims, award or over-award, except when consistent with the State Wage Case Principles.

3.—TERM OF AWARD

This award shall come into operation from the 15th September 1982 and shall continue in force until 15th September 1983.

4.—AREA, INCIDENCE AND PARTIES

This Award shall cover employees of CSR Limited employed in the classifications contained in this Award at their operations at Mosman Park and North Fremantle.

5.—DEFINITIONS

(1) "Mechanical Tradesperson—Special Class" means, subject to paragraph (c) of this subclause, a mechanical tradesperson who—

(a) (i) is engaged in work on, or in connection with, fluid power circuitry, which work requires for its performance the standard of knowledge and skills referred to in subparagraphs (iii) and (iv) of this paragraph; and

(ii) is able, where necessary and practicable, to perform such work without supervision and to examine, diagnose and modify systems comprising interconnected fluid power circuits; and

(iii) has satisfactorily completed the following TAFE units:

Course	Syllabus No.
Industrial Hydraulics 1 and	85007
Industrial Pneumatics 1 and either—	85009
Industrial Hydraulics 2 and	85008
Hydraulics Component Repair or	85012
Pneumatic System Maintenance (Industrial) and	85010
Pneumatic System Control (Industrial) or	85014

(iv) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under subparagraph (iii) of this paragraph or, in the case of a dispute, has been satisfactorily assessed and/or examined pursuant to the Fluid Power Exemptions Course detailed in paragraph (d) of this subclause; but does not include such an employee unless the work on which the employee is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College Trade Course.

(b) For the purpose of this award an employee shall be deemed to be a Mechanical Tradesperson—Special Class only for the time during which the employee meets the foregoing conditions, unless—

(i) that time exceeds 16 hours per week; or

(ii) in the opinion of his/her employer, or in the event of disagreement in the opinion of the Board of Reference, that time is likely, during the course of employment, to exceed 16 hours per week on average,

in which case the employee shall be classified as Mechanical Tradesperson—Special Class for as long as the employment continues on either of those bases.

(c) For the purpose of this definition, employees who have completed courses in any other State shall, in the event of a dispute, submit their credentials for assessment by TAFE or be assessed in accordance with subparagraph (iv) of paragraph (a) of this subclause.

(d) Fluid Power Exemptions Course:

Course exemptions for Fluid Power Certificate Units can only be granted on completion of the TAFE divisional exam. However, class attendance exemptions may be granted for the following reasons:

(i) Attending Short Vocational course (30 hours). This will exempt the student from the practical component of the course. However, the theory component can be completed by a 24 hour correspondence course with TAFE External Studies.

(ii) Students claiming exemption from the practical course requirements, due to their industrial skills, could obtain an exemption through a documented case presented by their employer.

Full course accreditation can then be obtained by completing the 24 hour correspondence course with TAFE External Studies.

(iii) Students without documented evidence may obtain a practical exemption through five hours of skill testing. These students, if successful, may then enter the correspondence mode to obtain full unit accreditation.

(iv) Students who have claimed subject exemptions in the certificate of workshop technology can only gain an automatic exemption from the introductory units on full completion of the certificate.

(e) For the purposes of this definition, 'fluid power circuitry' involves Industrial Hydraulics and/or Industrial Pneumatics.

6.—CONTRACT OF SERVICE

(1) Weekly Employment. Except as hereinafter provided, the contract of employment of every employee shall be for a weekly engagement.

(2) Casual Employment. A casual employee is one employed for less than one week, with a minimum of four hours in any day. He shall be paid at the rate of twenty per cent in addition to the rate prescribed in this Award on an hourly basis.

(3) Termination of Employment. Employment, except in the case of casual employees, shall be terminable on either side by one week's notice given on any day, or by the payment or forfeiture of a week's wages, as the case may be. This subclause does not affect the right of the employer to dismiss for misconduct, in which case wages shall be paid up to the time of dismissal only.

(4) Absence from Duty. Any employee not attending for duty shall lose his pay for the actual time of such non-attendance subject to the provisions of Clause 14 hereof as to payment for absence on account of illness. Where any unnotified and unapproved absence extends for more than one week, the employment shall be deemed to have terminated upon the expiration of the said week.

(5) Standing Down Employees. The Company shall be entitled to deduct payment for any day or portion of a day upon which an employee cannot be usefully employed because of any strike by the unions or by any other association or union, or through the breakdown of the employer's machinery, or any stoppage of work by any cause which the employer cannot reasonably prevent.

(6) If an employee is required to attend for work on any day but because of failure or shortage of electric power work is not provided, such employee shall be entitled to two hours' pay and further, where any employee commences work he/she shall be provided with four hours' employment or be paid for four hours' work.

(7) (a) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Award provided that such duties are not designed to promote deskilling.

(b) The employer may direct an employee to carry out such duties and use such equipment as may be required provided that the employee has been properly trained in the use of such equipment.

(c) Any direction issued by the employer pursuant to paragraphs (a) and (b) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

7.—WAGES AND ALLOWANCES

(1) Adults: The weekly wage rates for adult employees covered by this Award shall be—

	Rate Per Week $	First Arbitrated Safety Net Adjustment Payment $	Total Rate Per Week $
(a) Production Employees (AWU)—			
Shift Employees			
Shift Operator Grade 1	430.50	8.00	438.50
Shift Operator Grade 2	414.30	8.00	422.30
Day Employees			
Leading Hand Grade 1	421.30	8.00	429.30
Leading Hand Grade 2	414.30	8.00	422.30
Operator Grade 1	414.30	8.00	422.30
Operator Grade 2	403.20	8.00	411.20
Operator Grade 3	389.20	8.00	397.20
(b) Boiler Attendants and Greasers (CMEU)			
Boiler Attendant (attending two or more boilers)	421.30	8.00	429.30
Greaser and Hot Water Attendant	403.20	8.00	411.20

	Rate Per Week $	First Arbitrated Safety Net Adjustment Payment $	Total Rate Per Week $
(c) Tradespersons and Others (CEPU)			
Electrician—Special Class	496.30	8.00	504.30
Fitter—Tradesperson	468.40	8.00	476.40
Electrical Fitter—Tradesperson	468.40	8.00	476.40
Welder—First Class	468.40	8.00	476.40
Rigger—Licensed	422.80	8.00	430.80
Tradesperson's Assistant	391.10	8.00	399.10

(d) These rates in paragraphs (a), (b) and (c) recognise all disabilities associated with the work of metal trades employees, except those in subclause (7) hereof.

(e) Safety Net Adjustment payments set out in this clause represent a payment which shall be absorbed into overaward payments.

An "overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee would receive in excess of the "award wage" which applied immediately prior to the decision of the Western Australian Industrial Relations Commission dated 24 December 1993 (Application No. 1457 of 1993) for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

The Safety Net Payment is an adjustment reflecting the application of the arbitrated safety net adjustment principle enunciated in the State Wage Decision of 24 December 1993.

Consistent with the requirements of that principle the $8.00 safety net adjustment is absorbable to the extent of any equivalent amount in rates of pay—whether overaward, award or industrial agreement—in excess of the minimum rates (classification rate and supplementary payment) prescribed in accordance with the September 1989 State Wage Case decision.

(2) Apprentices

The weekly wage rates for apprentices shall be the undermentioned percentages of the weekly wage rate payable to an adult tradesperson under paragraph (c) of subclause (1) hereof:

	Percentage of Adult Tradesperson Wage
Four Year Term	%
First year	42
Second year	55
Third year	75
Fourth year	88
Three Year Term	
First year	55
Second year	75
Third year	88

(3) Junior Employees

(a) The weekly wage rates for junior employees shall be the undermentioned percentages of the weekly rate applicable to the General Duties classification under paragraph (a) of subclause (1) hereof:

	Percentage of Classification Rate for Job Being Done
Day Employees	%
16 to 17 years of age	60
Day Employees	%
17 to 18 years of age	70
18 to 19 years of age	90
19 to 20 years of age	90
20 to 21 years of age	100
Shift Employees	%
18 to 19 years of age	90
19 to 20 years of age	100
20 to 21 years of age	100

(b) No junior employed as automachine operator shall be paid less than the rate prescribed for junior employees 18 to 19 years of age.

(c) All junior wage rates shall be calculated to the nearest five cents.

(4) Shift Flexibility Allowance: In addition to the rates prescribed in paragraph (a) of subclause (1) hereof, shift process employees shall be paid—

	Per Week $
If required by the employer to acquire and use additional skills in one other process job	3.30
If required by the employer to acquire and use additional skills in two other process jobs	6.10
If required by the employer to acquire and use additional skills in three other process jobs	9.20

(5) Leading Hands: In addition to the wage rates prescribed in paragraph (c) of subclause (1) hereof, AEEFEU Leading Hands shall be paid per week—

	Per Week $
If placed in charge of not less than three and not more than ten employees	19.00
If placed in charge of more than ten and not more than 20 employees	28.70
If placed in charge of more than 20 employees	37.20

(6) Shift Allowance

Shift employees shall be paid a shift allowance equal to an additional 15% of the ordinary mean shift rate per afternoon shift and 17.5% of the ordinary mean shift rate per night shift.

Payments are to be made as agreed between the parties.

For the purpose of this subclause the mean rate shall be the average of the maximum and minimum said adult shift rates.

(7) Boilers

(a) Employees required to work in a boiler which has not been cooled down, shall be paid at the rate of time and a half for each hour so worked in addition to the rates referred to in subclause (1) hereof. Any broken time of less than one hour shall be paid for as one hour.

(b) Employees required to work inside boiler drums or in the space between the tube bank and boiler drums shall be paid at the rate of 69 cents per hour in addition to the rates in subclause (1) hereof.

(8) Confined Spaces, Tanks and Bins: Any employees engaged in cleaning or scraping inside any confined space, or tanks or bins, shall be paid 69 cents per hour, with a minimum payment for two hours, in addition to his/her ordinary or overtime rate of pay as the case may be whilst so employed.

(9) Char End: Employees working at the char end in either cutting-in raw char, or bagging spent char or char dust, shall be paid an extra 39 cents per hour whilst so working.

(10) First Aid Duties: Employees holding a current first aid certificate, who are appointed to act as first aid attendants in association with other work under this award, shall be paid an allowance of $7.60 per week.

(11) Electrician's Licence Allowance: An Electrician—Special Class or an Electrical Fitter, who holds and in the course of his/her employment may be required to use a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945, shall be paid an allowance of $14.30 per week.

(12) Water Blast Cleaner: Employees engaged in operating the water blast cleaner shall be paid an allowance of 44 cents per hour whilst so working.

(13) Tool Allowance

(a) Where the employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice, the employer shall pay a tool allowance of—

(i) $9.90 per week to such tradesperson; or

(ii) in the case of an apprentice a percentage of $9.90, being the percentage which appears against his/her year of apprenticeship in subclause (2) hereof,

for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of his/her work as a tradesperson or apprentice.

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

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

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

(14) Minimum Wage

Notwithstanding the provisions of this award no employee (including an apprentice), 21 years of age or over, shall be paid less than $275.50 per week at his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than $275.50.

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 by this award for the classification in which the employee is employed.

(15) Structural Efficiency

(a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the sugar refining industry and to enhance the career opportunities and job security of employees in the industry.

(b) At the enterprise, a consultative mechanism shall be established by the employer. The consultative mechanism shall be appropriate to the size, structure and needs of CSR North Fremantle and Mosman Park. Measures raised by the employer, employees or unions for consideration consistent with the objectives of paragraph (a) hereof shall be processed through the consultative mechanism.

(c) Measures raised for consideration consistent with paragraph (b) hereof shall be related to implementation of the new classification structure, the facilitative provisions contained in this award, and subject to Clause 23.—Training, of this Award matters concerning training and subject to paragraph (d) hereof, any other measures consistent with the objectives of paragraph (a) of this subclause.

(d) Without limiting the rights of either the employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission and by agreement of the parties involved shall be subject to the following requirements—

(i) the changes sought shall not affect provisions reflecting national standards recognized by the Western Australian Industrial Relations Commission;

(ii) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;

(iii) no employee shall lose income as a result of the change;

(iv) the relevant union or unions must be a party to the agreement;

(v) the relevant union or unions shall not unreasonably oppose any agreement;

(vi) any agreement shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this award and take precedence over any provision of this award to the extent of any inconsistency.

(e) The parties shall undertake appropriate consultation in accordance with paragraph (b) of this subclause.

(f) Upon transition to the new classification structure employees subject to paragraph (e) hereof will perform work in accordance with the new classifications as set out in Appendix 1 to this award and Clause 7.—Wages and Allowances, of this award.

(g) Reclassification will be according to the following principles—

(i) Employees will transfer to the new classification structure without loss of pay in accordance with Appendix 1 of this award agreed between the parties which will 'line-up' the old classifications with the new levels.

(ii) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.

(iii) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground the following principles apply—

The parties agree that the existing disputes avoidance procedure shall be followed.

Agreed competency standards shall be established by the parties in conjunction with TAFE where practicable (and SESDA when operative) for all levels in the new classification structure before any claims for reclassification are processed and shall be incorporated in the Implementation Manual as they become available.

The Implementation Manual shall lay down procedures for testing the validity of an employee's claim for reclassification. These procedures shall be undertaken by an independent third party recognized by the National Training Board—e.g. TAFE.

(h) Review:

The parties agree to review the implementation of the new wages and classification structure by June 1992. Furthermore, it is agreed to resolve issues relating to classification definitions, relativities and the method of expression of rates of pay. The parties will seek to amend this award to reflect agreements reached in respect of the above matters by June 1992.

8.—MIXED FUNCTIONS

Where an employee is employed for two hours or less during any day on work in a higher grade than his ordinary occupation he shall be paid for the time so occupied at the higher rate. If so employed for more than two hours, he shall be paid at the higher rate for the whole of the shift.

Provided that these provisions shall not apply where an employee is performing duties for the sole purpose of training in accordance with the enterprise training programme defined in Clause 23.—Training, of this Award.

9.—HOURS

(1) The hours of daywork employees shall be an average of 38 hours per week to be worked on a work cycle of 152 hours in twenty-eight consecutive days, of which nineteen days are rostered working days.

(2) Subject to subclause (4) hereof, the hours of shiftwork employees shall be an average of 38 hours per week to be worked on an annual cycle.

(3) Dayworkers shall work eight hours each day, Monday to Friday inclusive, between the hours of 7.00a.m. and 5.30 p.m.

(4) Shiftworkers shall work shifts of eight hours each, inclusive of crib time. Such employees shall be employed on day, afternoon and night shifts on successive weeks.

(5) Provided that these shift hours may be altered at any time by agreement in writing between the unions and the employer, subject always to the provision that the average weekly hours shall not exceed thirty-eight over the employee's roster cycle. Until any such agreement has been arrived at, it shall be permissible for the employer to continue the system in operation at the date hereof.

(6) Shiftworkers referred to in subclause (4) of this clause may commence the work of a night shift at 11.00 p.m. in which case the time worked between 11.00 p.m. and midnight on any Sunday or public holiday or rostered day off hereinafter specified shall carry ordinary rates and be included as part of their ordinary shiftwork hours.

10.—OVERTIME

(1) Payment For.

Except as otherwise provided all time worked outside the ordinary working hours on any day Monday to Friday inclusive shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) Saturdays and Sundays.

All time worked on Saturdays prior to 12 noon shall be paid for at the rate of time and a half for the first two hours and double time thereafter. All time worked on Saturdays after 12 noon or on Sundays shall be paid for at the rate of double time, except in the case of watchpersons or employees subject to subclause (4) of Clause 9.—Hours hereof.

(3) Public Holidays.

All time worked on any day prescribed as a public holiday under Clause 12 of this award shall be paid for at the rate of double time and a half.

(4) Meal Money.

Any employee required to continue working overtime for more than one hour after his/her ordinary finishing time or required to work on Saturdays or Sundays shall be paid $6.00 meal money for each meal time occurring during the period he/she is so working.

Provided that, except for work on Saturday and Sunday, such payment shall not apply where the employee has been notified the previous day of the requirement to work overtime, unless such overtime exceeds by more than one hour the period for which he/she was notified to provide a meal or meals.

(5) Travel.

An employee who usually travels to and from work by using the public transport service and who, when required to work overtime, is unable to use that service without unreasonable delay shall be provided with transport by the employer at no cost to the employee.

(6) Meal Breaks.

An employee shall not work for more than five hours without a break for a meal.

(7) Rest Periods After Overtime.

(a) When overtime work is necessary it shall wherever practicable be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) A employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If on the instructions of the employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) The provisions of this subclause shall apply in the case of shift workers who rotate from one shift to another as if eight hours were substituted for 10 hours when overtime is worked-

(i) for the purpose of changing shift roster; or

(ii) where a shift employee does not report for duty and a day employee or a shiftworker is required to replace such shiftworker; or

(iii) where a shift is worked by arrangement between the employees themselves.

(e) Where an employee (other than a casual worker) is called in to work on a Sunday or holiday preceding an ordinary working day, he shall, wherever reasonably practicable, be given ten consecutive hours off duty before his usual starting time on the next day. If this is not practicable, then the provisions of paragraphs (7a), (b) and (c) of this clause shall apply mutatis mutandis

(8) Recalls.

An employee recalled after leaving the employer's premises to work overtime shall be paid a minimum of four hours at the appropriate rate. Provided that overtime worked as a result of a recall shall not be regarded as overtime for the purpose of subclause (7) of this clause when the actual time worked is less than two hours on such recall or on each of such recalls.

(9) Work During Meal Breaks.

A dayworker instructed to work during his normal meal break and thereafter until a meal break is allowed shall be paid at overtime rates for the period during which such meal break has been deferred.

(10) Notwithstanding anything contained in this Award—

(a) The Company may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(b) No organisation party to this Award or employee or employees covered by this Award shall in any way, whether directly or indirectly be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

11.—TIME AND WAGES RECORD

The employer shall keep and enter up, or cause to be kept and entered up, a record containing the names of each of its employees to whom this Award applies, the class of work performed by and the wages paid to each such employee, and the time during which each such employee has been employed. Such record shall be open for inspection by representatives of the Unions during the usual office hours.

12.—PUBLIC HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to subclause (3) of Clause 10.—Overtime hereof, be allowed as holidays without deduction of pay, namely—New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) Where any of the days mentioned in paragraph (a) hereof, falls on a Saturday or a Sunday, such holiday shall be

observed on the next succeeding Monday and where Boxing Day falls on a Sunday or a Monday such holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.

(2) On any public holiday not prescribed as a holiday under this Award, the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.

13.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, each employee is entitled to leave of four weeks inclusive of nineteen working days and one rostered day off with payment as prescribed in paragraph (b) hereof each year after a period of twelve months' continuous service with the employer.

(b) Before going on leave an employee shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period, plus a loading of 20 per cent.

(c) For the purpose of calculating the leave loading in paragraph (b) above, the ordinary wage of shiftworkers does not include the shift allowance.

(2) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(3) Any time in respect of which an employee is absent from work except time which he is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award or on worker's compensation up to a maximum of 13 weeks in any year of employment shall not count for the purpose of determining his right to annual leave.

(4) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than two periods.

Provided further that an employee may, with the consent of his/her employer, take short-term annual leave not exceeding five days in any calendar year, at a time or times separate from any of the periods determined in accordance with this clause.

(5) Notwithstanding the provisions of this clause where the employer observes a Christmas closedown for the purpose of granting annual leave, it may require an employee to take his annual leave in not more than two periods but neither of such periods shall be less than one week.

(6) Where the employer closes the factory for the purpose of allowing annual leave to its employees, in the event of an employee being employed for portion only of a year he shall be entitled, subject to subclause (3) of this clause, to such leave on full pay as is proportionate to his length of service during that period with the employer and if such leave is not equal to the leave given to the other employees he shall not be entitled to work or pay whilst the other employees of the employer are on leave on full pay.

(7) If, after one month's continuous service in any qualifying 12 monthly period, an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee, the employee shall be paid one twelfth of his annual leave entitlement in respect of each completed month of continuous service in that qualifying period.

(8) An employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclause (b) or (c) of subclause (1) of this clause in lieu of that leave or, in the case to which subclauses (4), (5) or (6) of this clause applies in lieu of so much of that leave as had not been allowed, unless:

(a) he has been justifiably dismissed for misconduct; and

(b) the misconduct for which he has been dismissed occurred prior to the completion of the qualifying period.

(9) The provisions of this clause do not apply to casual employees.

14.—SICK LEAVE

(1) (a) Subject to the provisions of this clause an employee is entitled to payment for non-attendance on the grounds of personal ill-health for not more than eighty hours in his first and each subsequent year of service.

(b) The entitlement prescribed in paragraph (a) shall accrue on a pro rata basis for each completed month of service.

(c) Payment hereunder may be adjusted at the end of each calendar year or at the time the employee leaves the service of the employer, in the event of the employee being entitled by service subsequent to the sickness to a greater allowance than that made at the time the sickness occurred. This clause shall not apply where the employee is entitled to compensation under the Worker's Compensation Act.

(2) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Worker's Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(3) No employee shall be entitled to the benefits of this clause unless he produces proof satisfactory to his employer of sickness, but the employer shall not be entitled to a medical certificate unless the absence is for three days or more.

(4) Sick leave shall accumulate from year to year so that any balance of the period prescribed in subclause (1) of this clause which has in any year not been allowed to any employee by the employer as paid sick leave may be claimed by the employee and subject to conditions hereinbefore prescribed, shall be allowed by the employer in any subsequent year without diminution of the sick leave prescribed in respect of that year. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee, or failing agreement, shall be added to the employee's next period of annual leave, or if termination occurs before then, be paid for in accordance with the provisions of clause 13—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 13—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

15.—LONG SERVICE LEAVE

(1) Right to Leave.

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

(2) Long Service.

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

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

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

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

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

(e) Such service shall include:

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

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

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

(iv) any period during which the service of the employee was or is interrupted by service—

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

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

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

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

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

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

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

(iii) any interruption of a class referred to in paragraph (e) of this subclause;

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

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

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

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

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

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

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

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

(3) Period of Leave.

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

(b) Subject to the provisions of paragraphs (e) and (f) of this subclause, where an employee has completed at least 10 years' service the amount of leave shall be:

(i) in respect of 10 years' service so completed—13 weeks' leave;

(ii) in respect of the next 10 years' service—13 weeks' leave;

(iii) in respect of each seven years' service completed after such 20 years—13 weeks' leave;

(iv) on the termination of the employee's employment:

(aa) by his death;

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

in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for 10 years' service unless the employee has already become entitled to two periods of leave in which case the proportionate amount for service since he became entitled to that second period of leave shall be on the basis of 13 weeks for seven years' service.

(c) Subject to the provisions of paragraph (f) of this subclause, where an employee has completed at least seven years' service but less than 10 years' service since its commencement and his employment is terminated:

(i) by his death; or

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

the amount of the leave shall be such proportion of 13 weeks' leave as the number of completed years of such service bears to 10 years.

(d) In the cases to which paragraphs (b)(iv) and (c) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(e) An employee whose service with an employer commenced before 1st October 1982 and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis:

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

(ii) for each other completed year of service commencing before 1st October 1982 an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service; and (iii) for each completed year of service commencing on or after 1st October 1982 an amount of leave calculated on the basis of 13 weeks' leave for 10 years' service or, as the case may be, seven years' service.

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

(f) An employee to whom paragraphs (b)(iv) and (c) of this subclause apply whose service with an employer commenced before 1st October 1982 shall be entitled to an amount of long service leave calculated on the following basis:

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

(ii) for each completed year of service commencing before 1st October 1982 an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service; and

(iii) for each completed year of service commencing on or after 1st October 1982 an amount of leave calculated on the basis of 13 weeks' leave for ten years' service or, as the case may be, seven years' service.

(4) Payment for Period of Leave.

(a) An employee shall, subject to paragraph (c) of this subclause, be entitled to be paid for each week of leave to which he has become entitled, or is deemed to have become entitled, the rate of pay applicable to him at the date he commences such leave.

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

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

(d) The rate of pay—

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

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

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

(5) Taking Leave.

(a) In a case to which subparagraphs (i), (ii) and (iii) of paragraph (b) of subclause (3) apply:

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

(ii) Except where the time for taking leave is agreed to by the employer and the employee the employer shall give to an employee at least one month's notice of the date from which his leave is to be taken.

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

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

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

(aa) in full before the employee goes on leave;

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

(cc) in any other way agreed between the employer and the employee.

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

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

(6) Granting Leave in Advance and Benefits to be Brought in Account.

(a) Any employer may by agreement with a worker allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such case, the employee shall not become entitled to any

further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.

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

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

(7) Records to be Kept.

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

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

(8) State Law.

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

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

(c) Subject to paragraphs (a) and (b) of this subclause, the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the employee may be entitled in respect of employment of the employee by the employer.

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

16.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia of a wife, husband, defacto wife or husband, father, mother, parent-in-law, brother, sister, child or stepchild, grandchild or grandparent, be entitled, on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

(2) Payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, employee's compensation, leave without pay or on a public holiday.

17.—RIGHTS OF UNION REPRESENTATIVES

(1) Accredited representatives of the Unions shall be permitted to interview the employees during the recognised meal hour on the business premises of the employer and, accompanied by a representative of the employer if so desired, to inspect the operation affected during the progress of the work.

(2) Accredited representatives of the Unions shall have the right by appointment to meet with the employer's representatives to discuss any matter arising out of the terms and conditions of this Award.

(3) Accredited representatives of the Unions shall not be prevented from posting any lawful notice of their Union in a suitable place agreed upon between the employer and the Union.

18.—AWARD TO BE POSTED

A copy of this Award shall be posted in a suitable place agreed between the employer and the Unions.

19.—APPRENTICES

Apprentices may be taken in the trades or fitting and/or turning, electrical fitting or first class welding (engineering) in the ratio of one apprentice or every two or fraction of two journeymen (the fraction being not less than one) and shall not be taken in excess of that ratio unless

(a) the appropriate union so agrees; or

(b) the Commission so determines.

20.—PROTECTIVE EQUIPMENT

The Company shall make available such protective equipment as is agreed necessary between the employer and the Unions.

21.—ROSTERED DAY OFF DUTY

(1) Rostering

(a) Rostered days off shall be scheduled by mutual agreement between employees and the company.

(b) Except as provided by subclauses (3) and (7) herein, an employee shall be advised by the company at least four weeks in advance of the day he is to be rostered off duty.

(c) The company, with the agreement of the employee concerned, may substitute the day an employee is to be rostered off duty for another day in the case of a breakdown in machinery or to meet the requirements of the business, provided that those employees whose rostered day off conflicts with ship unloading will defer the rostered day to another mutually agreed day.

(d) An individual employee with the agreement of the company, may substitute the day he is rostered off duty for another day.

(e) In the event that an employee is rostered off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.

(2) Payment of Rostered Day Off

For every ordinary hour paid for, payment to the employee of one-twentieth (5%) of his hourly rate (weekly rate divided by 38) will be withheld by the employer. An amount equivalent to 7.6 hours ordinary pay shall be deducted from the accumulated deferred pay and shall be paid in the pay week in which the employee's rostered day off is taken. If sufficient deferred pay has not been accrued, part payment only for rostered days off shall be made except as provided in subclause (7) paragraph (b) herein.

(3) Rostered Day Off Falling on a Public Holiday

In the event of an employee's rostered day off duty falling on a public holiday, the employee and the company shall agree to an alternative day off duty as a substitution provided that in the absence of an agreement the substituted day shall be determined by the employer.

(4) Work on Rostered Day Off Duty

Any employee required to work on his/her rostered day off shall be paid in accordance with the overtime entitlements for work performed outside ordinary hours as prescribed in Clause 10.—Overtime of this award.

(5) Sick Leave and Rostered Days Off

Employees are not eligible for sick leave in respect of illness on rostered days off as such absences are outside their usual hours of duty.

(6) Annual Leave and Rostered Days Off

Each employee is entitled to a total of thirteen rostered days off per year; one of which is included in the four week annual leave entitlement as prescribed in clause 13 of this award.

(7) Rostering for Shiftworkers

(a) Any shiftworker shall not be entitled to full payment for a rostered day off unless sufficient deferred pay for ordinary time paid for has been accrued except as provided in paragraph (b) below.

(b) The rostered days off for shiftworkers shall be arranged according to a roster which shall be drawn up by the employer. If the roster does not allow an employee to accrue sufficient credit for full payment of a scheduled rostered day off, the deficit in deferred pay will be advanced by the company until such time as sufficient credit has been accrued. This provision shall also apply to employees commencing shiftwork part-way through a roster cycle.

(c) The net amount of any monies accrued for untaken rostered days off will be paid or deducted upon termination.

(8) In the event of agreement not being reached in the matters referred to in paragraphs (a) and (c) of subclause (1) of this clause, the matter may be referred to the Industrial Commission for determination.

22.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave: An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has not had less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job: Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8) (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be 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.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work.

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment: Notwithstanding any Award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award.

(9) Termination of Employment

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

23.—TRAINING

(1) The parties to this Award recognise that in order to increase efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to—

(a) developing a more highly skilled and flexible workforce;

(b) providing employees with career opportunities through appropriate training to acquire additional skills; and

(c) removing barriers to the utilisation of skills acquired.

(2) Following proper consultation with subclause (15) in Clause 7.—Wages and Allowances, of this Award, or through the establishment of a training committee, the employer shall develop a training programme consistent with—

(a) the current and future skill needs of the enterprise;

(b) the size, structure and nature of the operations of the enterprise;

(c) the need to develop vocational skills relevant to the enterprise and the industries of its employees through a combination of structured on-the-job training, and where practicable, training courses conducted by accredited educational institutions and providers.

(3) Where it is agreed that a training committee be established, such training committee shall be constituted when practicable, by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example—

(a) formulation of a training programme and availability of training courses and career opportunities to employees;

(b) dissemination of information on the training programme and availability of training courses and career opportunities to employees;

(c) the recommending of individual employees for training and reclassification;

(d) monitoring and advising management and employees regarding the on-going effectiveness of training.

(4) (a) Where, as a result of consultation in accordance with subclause (15) of Clause 7.—Wages and Allowances, of this Award, or through a training committee and with the employee concerned, it is agreed that 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 ordinary working hours, the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

(b) Any costs associated with standard fees for prescribed courses and prescribed textbooks, excluding those textbooks which are available in the employer's technical library, incurred with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis, subject to the presentation of reports of satisfactory progress.

(c) Travel costs incurred by an employee undertaking training in accordance with this clause, which exceed those normally incurred in travelling to and from work, shall be reimbursed by the employer.

(5) Subclauses (2), (3) and (4) hereof shall operate as interim provisions and shall be reviewed after nine months' operation. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in subclause (1) hereof. In this connection, the unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meeting the needs of an individual enterprise and/or the sugar refining industry.

24.—LIBERTY TO APPLY

Leave is reserved to the employer to make application to the Western Australian Industrial Relations Commission in respect of placitum (iii) of paragraph (d) of subclause (15) of Clause 7.—Wages and Allowances, of this Award.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

APPENDIX 1

NEW CLASSIFICATIONS (TRANSITION)

New Classification	Old Classification	Old Rate $	S/E Increase $	Broadbanding Increase $
AWU				
Shift Oper.	Sugar Boiler 1st Class	389.80	12.50	—
Grade 1 $402.30	Melt house Attendant	388.70	12.50	1.10
	Fugal/Drier Attendant	380.10	12.50	9.70
Shift Oper. Grade 2 $387.10	Char Attendant	374.60	12.50	—
Day Employees				
Leading Hand Grade 1 $393.70	L/Hand 30 kg	381.20	12.50	—
	L/Hand Warehouse	381.20	12.50	—
Leading Hand Grade 2 $387.10	L/Hand Receiving Raw Sugar	374.60	12.50	—
Operator Grade 1 $387.10	Fork Lift Operator	374.60	12.50	—
Operator Grade 2 $376.80	Sewer Packer Palletiser	364.30	12.50	—
	Packer	361.10	12.50	3.20
	Retail Packer	357.30	12.50	7.00
Operator Grade 3 $363.70	Laboratory Attendant	351.20	12.50	—
	Receiving Raw Sugar Attendant	351.20	12.50	—
	General Duties	351.20	12.50	—
CMEU				
Boiler Attendant (attending two or more boilers) $393.70	Boiler Attendant (attending two or more boilers)	381.20	12.50	—
Greaser and Hot Water Attendant $376.80	Greaser and Hot Water Attendant	364.30	12.50	—
ASEM				
Electrician S/C $463.80	Electrician S/C	448.80	15.00	—
Fitter $437.80	Fitter	422.80	15.00	—
Electrical Fitter $437.80	Electrical Fitter	422.80	15.00	—
Welder First Class $437.80	Welder First Class	422.80	15.00	—
Rigger-Licensed $395.10	Rigger-Licensed	382.60	12.50	—
Tradespersons Assistant $365.50	Tradespersons Assistant	353.00	12.50	—

APPENDIX 2—PARTIES TO THE AWARD

Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch), 1st Floor, 401-403 Oxford Street, MT HAWTHORN WA 6016.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Cnr Moore and Lord Streets, EAST PERTH WA 6004.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch, 1st Floor, Henley House, 102 Beaufort Street, PERTH WA 6000.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

(a) is not a member of the organisation; and

(b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

(a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;

(b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and

(c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative

of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

Dated at Perth this 9th day of November, 1982.

PUBLIC SERVICE APPEAL BOARD—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Metaxas

and

Public Service Commission.

No. PSAB 24 of 1993.

PUBLIC SERVICE APPEAL BOARD

COMMISSIONER R.N. GEORGE .

8 May 1997.

Order.

WHEREAS the Appellant sought and was granted leave to discontinue the application, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) R.N. GEORGE,
[L.S.] Commission.

NOTICES—
Union matters—

No. 680 of 1997

NOTICE is given of an application by the "State School Teachers' Union of W.A. (Incorporated)" to the Full Bench of the Western Australian Industrial Relations Commission for an alteration to Rule 4.—Membership and Rule 5.—Entitlements.

The current Rule 4.- Membership and Rule 5.—Entitlements are set out below, and the proposed new rules 4 and 5 follow—

Existing Rules

4.—MEMBERSHIP

The State School Teachers' Union of W.A. (Incorporated) shall consist of an unlimited number of persons employed or usually employed in the following categories—

(a) FULL MEMBERS—

(i) Teachers employed by the Education Department of Western Australia or by any institution providing technical and further education in Western Australia and teachers employed in pre-school centres in Western Australia provided that such teachers hold or are enrolled for the purpose of obtaining a teaching academic qualification.

(ii) Any person employed by any of the employers or in any of the places referred to in sub-rule (a) (i) of this rule who is employed as an education officer, guidance officer, counsellor or demonstrator.

(iii) Teachers employed in a temporary capacity by a technical and further education institution.

(iv) Teachers employed by and in a Community College in Western Australia.

(v) Any person elected to an office in the State School Teachers' Union of Western Australia.

(b) HONORARY LIFE MEMBERS: Any teacher or any employee of the Union who has rendered long and meritorious service to the Union may, upon retirement, be appointed as an Honorary Life Member. For the purpose of such an appointment it shall be necessary that nominations be received and approved by the Executive and published in the W.A. Teachers' Journal or The Western Teacher at least three months prior to the opening of State Council.

(c) HONORARY MEMBERS: Exchange teachers who are members of a teachers' organisation in the State or country from which they have come and unemployed teachers may be appointed by the Executive as Honorary Members of this Union.

(d) SPECIAL CATEGORY MEMBERSHIP: Persons who are not trained teachers but who because of their special expertise are placed in charge of a class in any area of the educational service may become Special Category Members.

(e) RETIRED TEACHER MEMBERS: Teachers retired from the Education Department of W.A. because of age or invalidism may be admitted as Retired Teacher Members at the discretion of the Executive.

(f) ASSOCIATE MEMBERS: The following persons are eligible—

(i) Retired employees of the Union.

(ii) Former members, including all categories who are not eligible for any other form of membership.

(g) APPOINTED MEMBERS: Any employee of the SSTUWA appointed to a position as General Secretary, Industrial Advocate, Industrial Organiser, Librarian, Industrial Research Officer or Women's Officer.

5.—ENTITLEMENTS

(a) FULL MEMBERS shall be entitled to all rights, privileges and benefits of membership of this Union.

(b) HONORARY LIFE MEMBERS shall be entitled to all rights, privileges and benefits available to full members except that they shall not stand for office.

(c) HONORARY MEMBERS shall have the same rights and privileges as full members except that they shall not be entitled to be represented at State Council or to hold Union office or to vote in elections for Union office.

(d) SPECIAL CATEGORY MEMBERS shall have the same rights and privileges as full members except that they shall not be entitled to form a branch, hold Union office, or vote at elections for a Union office.

(e) RETIRED TEACHER MEMBERS shall not be eligible to stand for election to any office of the Union or to vote at such an election but shall be entitled to all other rights, privileges and benefits of membership except as otherwise provided by this Constitution and provided that the use of the facilities at Union headquarters shall be by decision of the Executive.

(f) ASSOCIATE MEMBERS of the Union shall not be entitled to be represented at Conference, nor be eligible to stand for election to an office of the Union, nor to vote at such elections, nor receive industrial assistance but shall be entitled to use the facilities at Union headquarters and have other social benefits as decided by Executive from time to time.

(g) APPOINTED MEMBERS shall be entitled to all rights, privileges and benefits of membership of this Union, except

(i) the right to attend State Council as a delegate, and

(ii) the right to stand for office.

Proposed Rules

4.—MEMBERSHIP

The State School Teachers' Union of W.A. (Incorporated) shall consist of an unlimited number of persons employed or usually employed in the following categories—

(a) FULL MEMBERS—

(i) Teachers employed by the Education Department of Western Australia or by any institution providing technical and further education in Western Australia and teachers employed in pre-school centres in Western Australia provided that such teachers hold or are enrolled for the purpose of obtaining a teaching academic qualification.

(ii) Any person employed by any of the employers or in any of the places referred to in sub-rule (a) (i) of this rule who is employed as an Education Officer, Guidance Officer, Counsellor Demonstrator or Aboriginal Education Worker.

(iii) Teachers employed in a temporary capacity by a technical and further education institution.

(iv) Teachers employed by and in a Community College in Western Australia.

(v) Any person elected to an office in the State School Teachers' Union of Western Australia.

(vi) Any person employed by any of the employers or in any of the places referred to in sub-rule (a)(i) whose work is contracted out to or undertaken by an alternative employer.

(vii) Independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be eligible for membership of the Union.

(viii) Any employee of the SSTUWA (inc.) provided that such persons are not eligible for membership of the Australian Mucicipal, Administrative, Clerical and Services Union of Employee, W.A., Clerical and Administrative Branch.

(b) HONORARY LIFE MEMBERS: Any teacher or any employee of the Union who has rendered long and meritorious service to the Union may, upon retirement, be appointed as an Honorary Life Member. For the purpose of such an appointment it shall be necessary that nominations be received and approved by the Executive and published in the W.A. Teachers' Journal or The Western Teacher at least three months prior to the opening of State Council.

(c) HONORARY MEMBERS: Exchange teachers who are members of a teachers' organisation in the State or country from which they have come and unemployed teachers may be appointed by the Executive as Honorary Members of this Union.

(d) SPECIAL CATEGORY MEMBERSHIP: Persons who are not trained teachers but who because of their special expertise are placed in charge of a class in any area of the educational service may become Special Category Members.

(e) RETIRED TEACHER MEMBERS: Teachers retired from the Education Department of W.A. because of age or invalidism may be admitted as Retired Teacher Members at the discretion of the Executive.

(f) ASSOCIATE MEMBERS: The following persons are eligible—

(i) Retired employees of the Union.

(ii) Former members, including all categories who are not eligible for any other form of membership.

(g) APPOINTED MEMBERS: Any employee of the SSTUWA appointed to a position as General Secretary, Industrial Advocate, Industrial Organiser, Librarian, Industrial Research Officer or Women's Officer.

5.—ENTITLEMENTS

(a) FULL MEMBERS shall be entitled to all rights, privileges and benefits of membership of this Union.

(b) HONORARY LIFE MEMBERS shall be entitled to all rights, privileges and benefits available to full members except that they shall not stand for office.

(c) HONORARY MEMBERS shall have the same rights and privileges as full members except that they shall not be entitled to be represented at State Council or to hold Union office or to vote in elections for Union office.

(d) SPECIAL CATEGORY MEMBERS shall have the same rights and privileges as full members except that they shall not be entitled to form a branch, hold Union office, or vote at elections for a Union office.

(e) RETIRED TEACHER MEMBERS shall not be eligible to stand for election to any office of the Union or to vote at such an election but shall be entitled to all other rights, privileges and benefits of membership except as otherwise provided by this Constitution and provided that the use of the facilities at Union headquarters shall be by decision of the Executive.

(f) ASSOCIATE MEMBERS of the Union shall not be entitled to be represented at Conference, nor be eligible to stand for election to an office of the Union, nor to vote at such elections, nor receive industrial assistance but shall be entitled to use the facilities at Union headquarters and have other social benefits as decided by Executive from time to time.

This matter has been listed before the Full Bench on the 1st day of July 1997.

A copy of the Rules of the organisation and the proposed set of rules may be inspected at my office, 111 St George's Terrace, Perth.

Any organisation registered under the Industrial Relations Act 1979, or any person who satisfies the Full Bench that he has a sufficient interest or desires to object to the application may do so by filing a notice of objection in accordance with the "Industrial Relations Commission Regulations 1985".

R. LOVEGROVE,
Deputy Registrar.

2 May 1997.